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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No ~~251~~ 48.

THE KNIGHTS Ttemplars AND MASONS' LIFE INDEMNITY COMPANY, PETITIONER,

vs.

ROSA B. JARMAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED FEBRUARY 18, 1901.
CERTIORARI AND RETURN FILED MARCH 18, 1901.

(18,055.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 254

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, PETITIONER.

vs.

ROSA B. JARMAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 19, 1901.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the twentieth day of October, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the western district of Missouri, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Knights Templars and Masons' Life Indemnity Company was plaintiff in error, and Rosa B. Jarman was defendant in error, which said transcript of record as printed pursuant to the stipulation of the parties for use of the court upon the hearing of said cause, is in the words and figures following, to wit:

1 United States Circuit Court of Appeals, Eighth Circuit December Term, A. D. 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error.
} No. 1347.

It is hereby stipulated and agreed that the record in the above-entitled case shall not be printed in full, and that those parts only, which are hereby designated, shall be printed in full, the parts to be omitted also being indicated.

1st. Print citation with acknowledgment of service.
2nd. Print writ of error.
Omit transcript from circuit court of Grundy county, Missouri.
Omit stipulation as to time for answer.
3rd. Print agreed statement of facts.
4th. Print Exhibit A, being application for membership.
5th. Print Exhibit B, policy of membership.
6th. Print Exhibit D, constitution of company.
7th. Print Exhibit E, statistics of company.
8th. Print record entries.
9th. Print judgment.
10th. Print assignment of errors.
11th. Print petition for writ of error.

12th. Print caption of bill of exceptions with first page of same.

Omit agreed statement of facts but refer to former printing as follows: "Agreed statement of facts appears on pages — — of this record."

Omit Exhibits "A" "B" "D" and "E," but refer to former printing in each case as above in case of agreed statement of facts.

Print "Act of Illinois under which the defendant company was organized, entitled" etc.

Print certificate of authority of insurance department of Missouri, issued to defendant company, and the note appearing thereunder.

2 Print senate bill No. 105 as originally introduced.

Print extracts from the Senate Journal and House Journal of 39th General Assembly of Missouri.

Print section 5869 as it was before the amendment of 1897 and as it is now, amended.

Print the remainder of the bill of exceptions, being the memorandum of submission of the case, the declarations of law applying thereto, the judgment, and the exceptions taken to such declarations and judgment.

13th. Print the bond.

14th. Print the opinion of the court.

15th. Print the certificate of the clerk.

The clerk of the said court is respectfully requested to print only the parts of the record herein designated.

HERVEY B. HICKS,
Attorney for Plaintiff in Error.
HARBER & KNIGHT,
Attorneys for Defendant in Error.

No. 1347. United States circuit court of appeals, eighth circuit. K. T. & M. L. I. Co. *vs.* Jarman. Stipulation as to printing the record. Filed Oct. 26, 1899. John D. Jordan, clerk. H. B. Hicks, att'y for pl'ff in error.

UNITED STATES OF AMERICA, *set:*

To Rosa B. Jarman, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein The Knights Templars and Masons' Life Indemnity Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John F. Philips, judge of the circuit court of the United States for the western division of the western

district of Missouri, this 25th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN F. PHILIPS, *Judge.*

3 UNITED STATES OF AMERICA, } *ss:*
Western Division of the Western District of Missouri, }

We hereby acknowledge due service of the within citation this 29th day of August, A. D. 1898.

HARBER & KNIGHT,
Attorneys for Defendant in Error.

2341. United States circuit court, western district of Missouri, western division. Rosa B. Jarman *vs.* The Knights Templars and Masons' Life Indemnity Co. Citation. Filed Aug. 31, 1899. Adelaide Utter, clerk.

UNITED STATES OF AMERICA, *set:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the western division of the western district of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the April term, 1899, thereof, between Rosa B. Jarman, and The Knights Templars and Masons' Life Indemnity Company, a manifest error hath happened, to the great damage of the said The Knights Templars and Masons' Life Indemnity Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 24th day of October, 1899, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court. Issued at office in Kansas City, this 25 day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

ADELAIDE UTTER, *Clerk.*

Allowed by—
JNO. F. PHILIPS,
U. S. Dist. Judge.

4 UNITED STATES OF AMERICA, } *set:*
Western Division of the Western District of Missouri, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal of the United States Circuit Court for the Western District of Missouri, Western Division.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court of the United States for the western division of the western district of Missouri. Issued at office in Kansas City, this ninth day of September, A. D. 1899.

ADELAIDE UTTER, *Clerk.*

2341. United States circuit court, western district of Missouri, western division. Rosa B. Jarman *vs.* The Knights Templars and Masons' Life Indemnity Co. Writ of error. Filed Aug. 28, 1899. Adelaide Utter, clerk.

* * * * * * *

In the Circuit Court of the United States, Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY OF ILLINOIS, a Corporation, Defendant.

Now on this day come the parties to the above-entitled cause and agree to submit to the court for its determination the matters in controversy and agree that the following are the facts and agreements upon which the same shall be decided:

First. That the defendant was organized in the State of Illinois, May 5th, 1884, under and in accordance with the provisions of "An act to provide for the organization and management of corporations, associations or societies, for the purpose of furnishing life indemnity or pecuniary benefits to widows, orphans, heirs, relatives and devisees of deceased members, or accident or permanent disability, indemnity to members thereof," which said act was approved June 18, 1883, and in force July 1st, 1883. Said act is hereby admitted in evidence. That the said defendant company, immediately after its organization as aforesaid, commenced to do business in the State of Illinois, and has so continued to the present time. That defendant company, soon after its organization and incorporation began to do business in the State of Missouri, solicited applications therein and appointed among others W. C. Swazey its agent at Trenton, Grundy county, Missouri.

5

Second. That on the 19th day of October, 1885, John P. Jarman, then husband of this plaintiff, and at said time and all times thereafter up to the date of his death, hereinafter stated, a resident of the

city of Trenton, Grundy county, Missouri, made application through the defendant's agent at Trenton, Missouri, for membership in defendant company. That Exhibit "A," hereto attached, is an exact copy of the application made by said John P. Jarman, and is hereby made a part hereof, by reference thereto, and admitted in evidence in lieu of the original, to have the same force and effect as the original would have if so admitted.

Third. That said application was received by defendant company, on or before October 24th, 1885, and on said date defendant issued to said John P. Jarman, its policy of insurance or certificate of membership No. 861. Said policy or certificate marked "Exhibit B," being attached to the original petition in this cause, and an exact copy thereof, marked "Exhibit C" is hereto attached and made a part hereof, and either or both, as may be most convenient, may be referred to and considered as a part hereof.

Fourth. That said policy or certificate of membership was delivered by defendant's agent to John P. Jarman in the city of Trenton in Grundy county, Missouri, on or about the 25th day of October, 1885.

Fifth. That said "Exhibit D," which is hereto attached and made a part hereof, is an exact copy of the by-laws known as the constitution of said defendant company, as they were originally adopted, and shows under each section the constitutional amendment or amendments, if any, which have been made from time to time in said constitution up to the present time, and when they were made, and while it is admitted that the said amendments were made pursuant to the requirements of the constitution, and in accordance therewith, the legal effect of the said amendments as to the contract in question, is expressly reserved for determination.

Sixth. That on the 18th day of June, 1888, the defendant company complied with the act of the legislature of the State of Missouri, entitled: "Insurance companies on the assessment plan," Laws of 1887, page 199, and thereafter, until February, 1898, did business in the State of Missouri, upon the assessment plan. That, at the last-mentioned date, defendant having learned of the passage
of an act of the legislature entitled "An act to repeal section
6 5869 of article 3, chapter 89 of the Revised Statutes of Missouri, of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, relating to the statement of affairs of assessment insurance companies and misrepresentation- made in securing a policy of insurance and defense thereon for such misrepresentations," approved March 15, 1897, ceased to do business in said State of Missouri.

Seventh. That John P. Jarman, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death on the 12th day of September, 1898, by a gunshot wound, inflicted by himself. It is not contended, however, by plaintiff, that said self-destruction was the result of accident.

Eighth. That during his lifetime, said John P. Jarman paid all the assessments and charges of every kind levied against him by defendant company, and continued in good standing up to the time of his death aforesaid. That since his death, the plaintiff herein, beneficiary in said certificate, has fully complied with all the conditions and requirements thereof.

Ninth. The defendant reserves the right to have considered the House Journal, (regular session) 39th Gen. Assembly 1897, and Senate Journal, (regular session) 39th General Assembly, 1897, of Missouri, to show all the proceedings pertaining to senate bill No. 105, entitled "An act to repeal section 5869 of article 3, chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon, for such misrepresentations" and the same are hereby considered in evidence.

Tenth. That Exhibit "E" which is hereto attached and made a part hereof, contains certain statistics and facts relating to defendant company, which in so far as they bear upon the issues involved, are admitted in evidence with any additional facts touching the history or practice of the company which may be added upon the trial of the case.

Eleventh. It is further agreed between the parties hereto that in case the court finds that section 5855 R. S. 1889 of Missouri does not operate against the defendant company as to this action, the
7 defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman, except as provided in said policy, and that in this case the finding for the plaintiff shall be for the sum of $811.83 the total amount of assessments paid by said John P. Jarman without interest.

That if the court find that the contract in question in this action is subject to the provisions of section 5855 R. S. 1889, referring to suicide, and that the amendments of the constitution of defendant company become a part of the contract of John P. Jarman, the finding shall be for the plaintiff in the sum of $5,000.00 with interest thereon from November 28, 1898, at the rate of 6% per annum.

That if the court shall find that the contract in question is subject to section 5855 aforesaid and is affected by the amendments of the constitution of defendant company made January 8, 1889, but not by the amendments made in said constitution January 14, 1896, finding shall be for the plaintiff in the sum of $5,192 with interest thereon from November 28, 1898, at the rate aforesaid.

That if the court shall find that the contract in question is subject to section 5855 aforesaid and was not affected by either or any of the amendments of the constitution of defendant company, the finding shall be for the plaintiff in the sum of $5,811.83 with interest thereon from November 28, 1898, at the rate of 6% per annum.

The plaintiff herein contends that the refusal of defendant to make payment to her is under the circumstances of this case, wrongful and vexatious. Wherefore it is further agreed between the parties hereto that if the court should be of the opinion and find that the defendant has wrongfully and vexatiously refused to pay the plaintiff the sum found to be due her, if the finding be for plaintiff, there shall be added as provided by section 5927 R. S. 1889 for Missouri, ten per cent. upon the sum so found to be due to plaintiff without interest.

Twelfth. That the parties hereto have attempted to include all statements of fact deemed necessary for a fair determination of matters at issue between them, but it is expressly agreed that if any questions are brought up in argument which are not made clear by this statement, or if the court or either party shall desire further information upon the facts of any matter in issue, the same may be supplemented by further agreement between the parties or by either party introducing the evidence thereon.

8 It is further agreed that all pleadings herein are waived and that the case may be submitted to the court for its decision a jury trial being expressly waived, upon the facts herein presented and those which may be added upon the trial and argument of the case, and that in case either party hereto appeals from the decision of this court, this statement of facts, together with any additional facts which are produced upon the argument and trial of the case and the declarations applying to the case which are made by the court, all of which, with the exceptions, if any, thereto, shall be reduced to writing and added hereto shall be the record upon which this case shall be presented to the appellate court, if it shall be so appealed.

HARBER & KNIGHT,
Attorneys for Plaintiff.
HERVEY B. HICKS,
Attorney for Defendant.

Said Exhibit A is in words and figures as follows:

OCT. 24TH, 1885.

Application to the Knights Templars and Masons' Life Indemnity Company.

Home office, Chicago, Illinois.

Particulars Required from Persons Proposing to Effect a Membership in the Company and Forming the Basis of the Contract.

Number of membership, 861.

Post-office address, ——.

1. Name (in full) of the party proposed for membership. John P. Jarman.

2. Present residence. Trenton in the county of Grundy, in the State of Missouri.

3. Profession or occupation. State precise nature of business. Druggist.

4. Place and date of birth. Richmond, Ky. Year, 1841. Month, Sept., day, 23.

5. Are you married or single? Married.

6. A. Are your habits at the present time and have they always been sober and temperate? A. Yes.

B. Do you use intoxicating drinks habitually as a beverage? B. No.

C. Are you engaged in any way in the retailing of alcoholic liquors? C. Only as a druggist.

7. Have you been successfully vaccinated? A. Yes.

8. Are you subject or predisposed to dyspepsia, dysentery, diarrhœa, or any other disease or bodily infirmity? No.

9 9. Have you had, or been afflicted, since your childhood, with any of the following complaints: Separate answer required to each query.

Disease of the lungs or pulmonary complaints, no. Spitting or raising blood, no. Rupture, no. Fits or convulsations, no. Insanity, no. Rheumatism, no. Dropsy, no. Bronchitis, no. Fistula, no. Bilious colic, no. Paralysis, no. Apoplexy, no. General debility, no. Spinal disease, no. Gout, no. Cancer, no. Calculus or gravel, no. Smallpox, no. Scrofula, no. Eruptions or diseases of the skin, no. Syphilis, no. Sunstroke, no. Asthma, no. Palpitation or disease of the heart, no. Disease of the liver, kidneys or brain, no. Or any serious disease, no.

Q. Have you ever met with any accidental or serious personal injury? No.

11. Have you ever been seriously ill? If so, when, with what complaint, and who was the medical attendant? State his name and residence. No.

12. Are you now in good health? Yes.

13. Has either of your parents, or any of your brothers or sisters died of, or been afflicted with consumption, scrofula, insanity, gout, or any pulmonary complaint or any hereditary disease? (State particulars.) Father died of acute bronchitis.

14. A. Are your parents living? If so, what are their ages?

A. Father's age if living? —. Mother's age if living? 65.

B. If dead, at what ages and of what diseases did they die?

B. If dead, father's age at death? 60.

Cause of death? Acute bronchitis.

B. If dead, mother's age at death —. Cause of death? —.

(N. B.)—In giving "Cause of death" avoid all indefinite terms such as fever, general debility, exposure, etc. If the word "childbirth" be used, specify how long after delivery the death occurred, and whether it was accompanied by any disease of the chest.

15. How many brothers and sisters have you had? No. Brothers 3. No. Sisters, 3.

16. How many are living and what are their ages? No. Brothers, 1. Ages, 38. No. Sisters, 2. Ages, 43, 33.

17. How many of them are dead, and at what ages, and of what

diseases did they die? Died in infancy, don't know the disease.

10 No. Brothers dead, 2. Ages, —. Causes of death? 1. Don't know, died in infancy.

No. Sisters dead, 1. Ages, —. Causes of death? Don't know, died in infancy.

18. What is the present and general state of health of parties referred to in queries 14 and 16? Good.

19. Are you now a member of this company, or have you ever been? If so, state number of membership and amount. No.

20. Have you any insurance on your life? If so, where, and for what amount? Yes, $2,500. N. W. Masonic. $2,000 K. of Honor.

21. Has any proposal or application to insure your life ever been declined or made to any company, association or agent, upon which, a policy or certificate has not been issued, or any physician given an unfavorable opinion? If so, state full particulars? No.

Q. Where have you resided, (during the summer and winter) during the last ten years? Kentucky and Missouri.

23. On what plan and basis, as to amounts of benefits, do you desire to be admitted? $5,000.00 and all the money paid in assessments.

24. To whom do you wish the benefit paid (unless otherwise ordered during your lifetime or in your will) and relationship existing between you? My wife, Rosa B. Jarman and my children.

N. B.—Where no provision is made it will go to your widow, children or heirs and in the order named.

25. Have you had the plan of this company fully explained to you and do you understand its benefits? —.

26. To what Masonic degree have you attained? In what body, and where? (The highest degree attained and body is sufficient.) 3rd degree, Trenton lodge, 111.

I do h-reby declare that, as the basis of my application for membership in the Knights Templars and Masons' Life Indemnity Company that I am now in good health and do ordinarily enjoy good health, and that in the above proposal I have not withheld any circumstance or information touching the past or present state of my health, or habits of life with which the officers of the Knights Templars and Masons' Life Indemnity Company ought to be made acquainted.

11 And I do hereby agree that the statements and representations contained in the foregoing application and declaration shall be the basis of the contract between me and the said Knight Templars and Masons' Life Indemnity Company; the truthfulness of which statements and representations I do hereby warrant, and that if the same, or any of them, are in any respect untrue, or if there shall be any omission or neglect to pay any of the assessments or annual dues, on or before the days on which they shall fall due, except as provided for in the days of grace by the constitution and by-laws of this company, that then, in either event, the membership which may be issued hereon shall be void, and all moneys

which may have been paid on account of such membership shall be forfeited to said company; and, inasmuch as only the officers of the company have the authority to determine whether or not a membership shall issue on any application, and as they act on the written statements and representations referred to, it is expressly understood and agreed that no statements, representations or information made or given by or to the person soliciting or taking this application for a membership or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing, and presented to the officers of the company at the home office in the above application. I further agree, that under no circumstances shall the membership hereby applied for, be in force until the actual payment to and acceptance of, the membership fee, by an authorized agent of the company, during my lifetime and good health. I further agree, if accepted, to abide by the constitution, rules and regulations of the company, as they now are, or may be constitutionally changed hereafter.

Dated at Trenton, Mo., this 19th day of October, 1885.

JOHN P. JARMAN, *Applicant.*

W. H. GRAY,
General Manager.
W. C. SWAYZE,
Witness, Box 89.

Medical Examiner's Report.

The medical examiner will please give an explicit answer to each of the following questions and ask such others as he may deem proper under the circumstances of the case giving any information elicited thereby and make the examination, in all respects, thorough, exact and circumstantial.

He should carefully read the accompanying application for membership before making the examination and note any points in the same requiring special attention

12 *Questions Each of which is to be Answered by and in the Handwriting of the Medical Examiner.*

1. Name (in full) of the person examined. John P. Jarman.

2. A. Do you believe the person examined to be the party on whose life the accompanying application is made? A. Yes.

B. How long have you known him? B. 6 yrs.

(The examining physician is requested to satisfy himself in all cases as to the identity of the party being examined.)

3. Description of the person examined. Weight, 140 lbs. Height, 5 ft. 6 in. Figure, erect. Measure around the abdomen, 34½.

A. How long have you held this weight? B. Have you recently increased or diminished in weight? No.

Circumference of the chest, at rest, 33¼ in.; under forced expiration, 31 in.; under forced inspiration, 35¼. Descended from what

race? (As English, Scotch, etc.) English and Irish. General appearance, healthy or unhealthy? Healthy.

Hair, dark; eyes, brown; complexion, fair; temperament, sanguine.

4. A. Are the functions of the brain, the muscular and nervous system in a healthy state? A. Yes.

B. State whether the party has ever *has* had paralysis, vertigo, tremors, catchings of any parts, or other nervous affections? No.

5. Does auscultation and percussion of the chest indicate any disease of the heart or respiratory organs? No.

6. A. Is the respiratory murmur clear and distinct over both lungs? Yes.

B. Is the character of the respiration full, easy and regular? B. Yes.

C. Are there any indications of disease of the organs of respiration? C. No.

7. A. Is the character of the heart's action uniform, free and steady? A. Yes.

B. Are its sounds and rhythm regular and normal? B. Yes.

C. Are there any indications of disease of this organ or of the blood-vessels? C. No.

8. A. State the rate and other qualities of the party's pulse? A. 72, sitting. 78 standing.

B. Does it intermit? B. No.

C. Does it become irregular or unsteady? C. No.

13 9. Is he subject to habitual cough or expectoration, difficulty of breathing or palpitation? No.

10. A. Are the functions of the abdominal and genito-urinary organs in a healthy state? A. Yes.

B. Does rupture exist? If so, state its character and extent and whether the applicant wears a truss? B. No.

11. Has the person any predisposition, either hereditary or acquired, to any local or constitutional disease? No.

12. Have you any reason to believe that his parents, brothers, sisters, uncles or aunts ever had pulmonary or other disease hereditary in their nature?

In case either of the parents of the applicant *having* been affected with or died of disease hereditary in its nature, the medical examiner is requested to state the facts in the case, especially the age of the parent so affected, and whether the applicant resembles the parent so affected in general temperament, constitution, etc. No.

13. A. Does he resemble the father or mother in general temperament, constitution, etc.? A. Mother.

B. Do you answer from personal knowledge? B. I do not answer from personal knowledge.

14. A. Has the person ever had any severe injury or illness? No.

B. If so, has it had any effect on his constitution? B. No.

C. Is there any indication that he is not now entirely well? C. No.

D. Whether deaf, dumb, blind or lame? D. No.

15. A. Does the party habitually use ardent spirits wine, or malt liquors? A. No.

B. If so, to what extent? B. —.

C. Are there indications that would lead you to suppose that the applicant has led or leads other than a sober and temperate life? C. No.

16. If the person's weight be much over or under the average or if the family history, or if any disease or injury or any other circumstance connected with him, should seem to affect seriously the character of the risk, the reason for recommending it should here be given.

17. A. Have you carefully read the answers of the applicant in the annexed application? Yes.

B. Do they reveal any facts which you deem of special importance to comment upon in your report; and if so, what are they? B. No.

14 18. Do you consider the person's life safely insurable and do you recommend that a certificate of membership be granted? I do.

19. The medical examiner will as far as possible, obtain from the party examined the history of his grandparents and fill up the annexed spaces.

	Age if living.	Condition of health.	Age at death.	Cause of death.
Father's mother.....	.....	.....	90.	Old age.
Father's father.....	.....	.. ..	65.	Cholera.
Mother's mother.....	.....	.....	70.	Don't know.
Mother's father	.....	.....	75.	Don't know.

J. P. Jarman, signature of person examined, to be attached in the presence of the medical examiner.

Received payment for the above examination.

JNO. A. WEBSTER, M. D.,
Medical Examiner.

Examined at Trenton, Mo., this 19th day of October, 1885.

Additional Remarks—Notice to Applicant and Doctor.

The applicant is in all cases expected to pay and the physician to collect the amount of his fee, of $1.50, for this examination at the time it is made, which amount, if the application is approved by the medical director, will be credited on your initiation fee at the home office.

W. H. GRAY,
General Manager.

October 23, 1885.

Approved,
J. L. WHITE,
Med. Director.

(ORIGINAL EXHIBIT B.)

$5,000. No. 861.

The Knights Templars and Masons' Life Indemnity Company.

In consideration of twelve dollars and the agreements and stipulations hereinafter expressed, John P. Jarman, druggist of Trenton, Mo., is admitted to membership in the Knights Templars and Masons' Life Indemnity Company, for the term of life, from the twenty-fourth day of October, 1885, at 12 o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member in pursuance of the constitution and by-laws of said company, at the times and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice and satisfactory proof of the death of said member is furnished said company, to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named, (unless otherwise ordered by the member in his application, or if he chooses, subsequently by will or otherwise; in which case the company shall be notified by the member in writing and the receipt of such notification be duly acknowledged by the company—see section 6 of article 7 on the back of this policy), the sum of five thousand dollars, and all the money paid on the policy in assessments, subject to the limitation as to the amount of such payment as is provided in section one (1), of article seven (7), of the constitution on the back of this policy. At the end of each ten (10) years continuous membership, the said John P. Jarman shall receive a bond bearing three (3) per cent. annual interest payable with the bond, for his entire proportion of the surplus, as per article seven (7), section two (2), which bond is available at any time, without notice, in payment of assessments as set forth in article seven (7), section three (3) of the constitution on the back of this policy.

This policy is issued and the said John P. Jarman is admitted to membership in this company, and this policy is accepted by said member upon the following agreements and stipulations which are made a part of this contract.

1st. The application on which this policy is issued is made a part of this policy, by reference thereto, and the answers to questions and statements therein shall be a warranty of the truth of such answers and statements and if this policy has been obtained by or through any fraud, misrepresentations or concealment, or by any false statement, then this policy shall be absolutely null and void, and this company may cancel the same, which shall work a forfeiture of all rights under this contract.

2nd. Any failure to pay assessments as provided in conditions printed on the back of this policy, shall forfeit the membership in this company of the holder of this policy, and all benefits arising therefrom; but may be subsequently restored upon such terms as the directors of the company may fix.

3rd. The holder of this policy shall be bound by the post-office address given in the application until the company shall receive

notice and acknowledge the same, of a change of such address, and then such post-office address shall bind such member until this company shall receive notice of, and acknowledge, a different post-office address.

4th. That if the holder of this policy shall impair his health,
16 during the time of his membership in this company, by the habitual use of intoxicating drinks, or of opium, upon proof of such fact being made to the satisfaction of the board of directors of this company, such member shall forfeit all claims upon this company and shall be dropped from the roll of its members.

5th. The holder of this policy during the continuance of his membership in this company, is freely permitted to reside in any settled portion of the western hemisphere lying north of the thirty-second parallel of north latitude at all seasons of the year; and in the United States lying south of said thirty-second parallel, excepting from the first day of July until the first day of November in each year, and in the eastern hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich at all seasons of the year; and in Italy south of forty-second parallel excepting from the first day of July to the first day of November in each year; and he may also pass as a passenger by the usual routes of public conveyance to and from any port or place within the foregoing limits; but if he shall at any time during continuance of his membership in this company, pass beyond or be without the foregoing limits, or shall be personally engaged in blasting, mining or submarine operations, or in the manufacture or transportations of explosive substances, or as an employé in any capacity on any sea, lake or river, or any other body of water, or upon any railroad train or if he shall enter into military service, whether voluntarily or otherwise, (the militia when not in actual service alone excepted), without the consent of this company previously given in writing, signed by the president or one of its vice-presidents or if his death shall result from injuries received while under the influence of alcoholic liquors; or in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, State or province, or from any aerial voyage or trip; then in each and in every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member shall have no claims for benefits on this company.

Provided that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount on his policy as the member shall have paid to this company on this policy in assessments on the same without interest.

6th. To avoid lawsuits, and yet insure the ends of justice, it is
17 expressly stipulated and agreed that all disputes arising between this company and the claimant or claimants of benefits inuring under this policy, shall be settled by arbitration, and in the manner provided by article 8, section 2 of the constitution of

this company, as the same appears printed on the back of this policy.

7th. It is further agreed by the holder hereof that, unless claim is made for benefits under this policy by the widow, heirs, devisee or devisees of the said member within six months after the death of said member, then, and in that case all claims for benefits under this policy shall be forfeited, and this company shall be released from all liability for such benefits.

8th. It is further agreed that the constitution or by-laws printed on the back of this policy shall separately and collectively form a part of this contract.

In witness whereof, the said Knights Templars and Masons' Life Indemnity Company has caused these presents to be signed by its president, countersigned by its general manager, and affixed its seal in the city of Chicago, State of Illinois, this 24th day of October, 1885.

[SEAL.] J. ADAM ALLEN, *President.*

Countersigned by
W. H. GRAY,
General Manager.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

Entered according to act of Congress in the year 1884 by W. H. Gray, in the office of the Librarian of Congress at Washington.

ARTICLE 1.

Name and Object.

SECTION 1. This company shall be known as the Knights Templars & Masons' Life Indemnity Company.

SECTION 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

SECTION 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

ARTICLE 2.

Officers and Directors.

SECTION 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

18 SECTION 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members provided that, as near as practicable, an equal number shall be elected each year for a period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

SECTION 3. At the election for directors, and on all questions com-

ing properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy at the time of its issue.

ARTICLE 3.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SECTION 2. The board of directors shall have power to employ any agent, agents, or other service, for such time and on such terms and with such powers, as in their judgment will best promote and conserve the interests of the company.

SECTION 3. They shall have power to remove (*and*) officer for inefficiency or malfeasance, in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal, provided the accused shall have thirty days' previous notice of the charges and specifications and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SECTION 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All moneys deposited therein shall be withdrawn only on the check of the president of the company and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SECTION 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

19 ARTICLE 4.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued and shall constitute the basis of settlement with the beneficiaries; but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

SECTION 2. Post-office address.—It shall be the duty of all the members to keep the company fully advised of any change of residence or post-office address always giving full address.

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars and all the money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy

may change the amount of his benefit, from a lower to a higher amount by the surrender of his policy furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

SECTION 4. Upon the death of any member an assessment increasing with age, shall be made upon the surviving members, provided an assessment is needed, according to the following table of rates:

Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments per $1,000.

Years, of age, inclusive,			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
Years of age, inclusive,			51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

SECTION 5. There shall be an annual due of one dollar per one thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy of the same as an unpaid assessment.

ARTICLE 5.

SECTION 1. Seventy-five per cent. of all moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SECTION 2. All other moneys shall be placed in a contingent fund out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds as are herein provided.

ARTICLE 6.

Assessments.

SECTION 1. Upon notice and satisfactory proof of a death of a member, (should it be necessary to make an assessment), the company, or such person as the board may direct, shall send by mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member and the amount due from the member to whom said notice is sent. The party sending

such notice may employ a suitable person, persons or corporation in any town or city who may act in serving such notices either personally or by mail. A notice so sent or served shall be deemed and taken to be a lawful and sufficient notice for the payment of the assessment required.

SECTION 2. Should any one fail to forward, as indicated in the notice, the amount thus due, for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages and may be reinstated to membership subsequent to the thirty (30) days upon such terms as the board of directors may fix.

SECTION 3. Any member may make a deposit in advance for the payment of his assessments which money shall be used for no other purpose by the company and in case of the member's death before it is so needed the unused balance shall be paid back with the policy.

21 ARTICLE 7.

Benefits.

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children or heirs of the deceased member, (and in the order named unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership: Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided it shall not exceed $5,000 and all the money paid on the policy in assessments; and a certificate for $1,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $1,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

SECTION 2. At the end of each ten years' continuous membership, such members shall receive a bond bearing 3% annual interest for such a proportion of the surplus on the first day of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

SECTION 3. Any such bond can be used (as) par, and accrued interest at any time, without notice, in payments of assessments, and no bond shall run longer than the life of the member; but if unused, shall be payable with his policy at death.

SECTION 4. At the end of each five years' continuous membership, the company will, on the return of the policy, to the home office and the payment of twenty-five cents, endorse on it the amount of assessments paid; which amount is payable at death on the same conditions as the policy itself.

SECTION 5. Any member desiring to withdraw, shall be furnished

under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SECTION 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries and all accepting any interest in this policy or company do so upon these express terms.

22 ARTICLE 8.

Miscellaneous.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks, or opium, shall upon proof of the fact to the satisfaction of the board of directors forfeit all claim upon the company and be dropped from the roll of its members.

SECTION 2. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty days after due notice that an arbitration is desired, then in this case the party desiring to arbitrate having selected an arbitrator, may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select the third party who shall constitute an authoritative commission to hear and determine the case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the county where the home office is located.

SECTION 3. This constitution may be amended at any regular meeting of this company by three-fourths of those voting:

Provided, that all proposed amendments shall first be submitted in writing to the board of directors, at a regular meeting and if five (5) directors approve the said amendments then the board shall require a notice of the proposed change to be given to all the members of the company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SECTION 4. The board of directors shall have power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

Policy No. 861. Knights Templars and Masons' Life Indemnity Company. Name, John P. Jarman. Amount limited to $5,000, and all money paid in assessments. Total first payment, $12.00 including medical examination. For assessments and dues see article 4, sections 4 and 5 of the constitution.

23 Indorsed on back:

I desire this policy to be made payable to my wife, Rosa B. Jarman. Jno. P. Jarman. Jun- 25, '92.

Exhibit "B."

(Takes place of "B" and "C.")

Exhibit D.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

Article 1, section 1, remains unchanged.

Article I.

Name and Object.

Section 1. This company shall be known as the Knights Templars and Masons' Life Indemnity Company.

Section 2. Originally as follows: The object of this company shall be to furnish life indemnity, or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

Sec. 2. Amended January 14, 1896 (Record p. 303) so as to read as follows:

Section 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs relatives, devisees or legatees of deceased members, or to members physically disabled, totally and permanently, according to the regulations and provisions hereinafter specified.

The following sections from form No. 2 have remained the same up to date, except as noted:

Section 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

Article II.

Officers and Directors.

Section 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

Sec. 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members, provided that, as near as practicable, an equal number shall be elected each year for a
24 period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

Sec. 3. At the election of directors and on all questions coming properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy, at the time of its issue.

ARTICLE III.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SEC. 2. The board of directors shall have power to employ any agent, agents or other service, for such time and on such terms and with such powers as in their judgment will best promote and conserve the interests of the company.

SEC. 3. They shall have power to remove any officer for inefficiency or malfeasance in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal; provided the accused shall have thirty days' previous notice of the charges and specification, and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SEC. 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All the moneys deposited therein shall be withdrawn only on the check of the president of the company, and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SEC. 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

ARTICLE IV.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company, a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued, and shall constitute the basis of settlement with the beneficiaries, but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

Article IV, section 3, originally as follows:

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars, and may change from a higher to a

lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended Jan. 8, 1889 (see Record p. 121) the words underscored were inserted:

SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy for the first five years, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars; and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended January 13, 1891, (see Record, p. 176), by inserting the words "except one additional policy on the term plan, as provided in article VIII, sec. 2," underscored.

SEC. 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all the money paid in assessments upon the policy for the first five years, but no member shall hold more than one policy at the same time except one additional policy on the term plan, as provided in article VIII, section 2. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of
26 the medical director, and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 3, amended January 14, 1896, (see Record p. 304), by striking out the words, "and all the money paid in assessments upon the policy for the first five years" underscored above, leaving the section as follows:

SECTION 3. Policies of membership may be issued upon a basis of benefits ranking in amounts to five thousand dollars, but no member shall hold more than one policy at the same time, except one additional policy on the term plan, as provided in article VIII, sec. 2. Any holder of a policy may change the amount of his benefit from a lower to a higher amount by the surrender of his policy, furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director, and paying the sum of five dollars; and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

Article IV, sec. 4, originally as follows:

SEC. 4. Upon the death of any member an assessment, increasing with age, shall be made upon the surviving members, (provided an assessment is needed), according to the following table of rates.

Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments for $1,000.

Years, of age, inclusive			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
"	"	"	51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	(65) and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

Article IV, sec. 4, amended February 20, 1894 (see Record p. 252) by adding words underscored:

SEC. 4. Upon the death of any member an assessment, increasing with age, shall be made upon the surviving members, (provided an assessment is needed), according to the following table of
27 rates for an amount sufficient to comply with the laws of the State of Illinois; said table is drawn for $1,000 which shall be the unit in determining all other amounts.

Table of Rates—Assessments for $1,000.

Years, of age, inclusive			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
"	"	"	51 to 55	1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessments shall be made for less than the above table of rates, nor so long as the money in the death fund will pay the maximum loss in full.

SEC. 5. There shall be an annual due of one dollar per one thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy the same as an unpaid assessment.

Article IV, sec. 6, created and added February 20, 1894 as follows:

SEC. 6. Policy-holders of this company will be required to pay with and in addition to annual dues, their *pro rata* amount of such additional sum as may be required to meet any tax that may be imposed upon the company by the laws of the State in which the assured member resides, and a failure to pay said amount shall work a forfeiture of the policy the same as an unpaid assessment.

ARTICLE V.

Sections 1 and 2 were originally as follows:

SECTION 1. Seventy-five per cent of all the moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SEC. 2. All other moneys shall be placed in a contingent fund, out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds, as are herein provided.

28 Article V, sections 1 and 2 were amended January 14, 1896, (see Record p. 304) so as to read as follows, parts affected inked:

SECTION 1. Seventy-five per cent of all moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses and disability claims.

SEC. 2. All other moneys shall be placed in a contingent fund, out of which the expenses and emergencies are to be met, and all the remainder, or surplus, shall be invested by the company in reliable securities, from which the bonds provided for in article VII, sec. 2 shall be paid.

ARTICLE VI.

Section 1, originally as follows:

Assessments.

SECTION 1. Upon notice and satisfactory proof of the death of a member, (should it be necessary to make an assessment) the company, or such person as the board may direct, shall send by mail to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member, and the amount due from the member to whom said notice is sent. The party sending such notice may employ a suitable person, persons, or corporation in any town or city who may act in serving such notice, either personally or by mail. A notice so sent or served shall be deemed and taken as a lawful and sufficient notice for the payment of the assessment required.

Article VI, sec. 1, amended January 14, 1896, so as to read as follows:

Assessments.

SECTION 1. Upon notice and satisfactory proof of the death of a member (should it be necessary to make an assessment) the company or such other person as the board may direct, shall send, postage prepaid by the United States mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member, and the amount due from the

member to whom said notice is sent. A notice so sent shall be deemed and taken (—) a lawful and sufficient notice for the payment of the assessment required.

29 Article VI, sec. 2, originally as follows:

SEC. 2. Should any one fail to forward, as indicated in the notice, the amount thus due for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages, and may be reinstated to the membership subsequent to the thirty days upon such terms as the board of directors may fix.

Article VI, sec. 2, amended January 14, 1896, so as to read as follows: Parts affected underscored. (See Record, p. 304, 305.) It appears that the words erased were not a part of the amendment, and should be omitted.

SEC. 2. Should any member fail to pay or to forward, as indicated in the notice, the amount thus due for a period of ten (10) days after the depositing of said notice in the United States post-office or mail box in the city of Chicago, such failure to so pay or forward the amount due shall thereby and *ipso facto*, work a forfeiture and termination of his membership and all benefits arising therefrom.

Any one whose membership has thus become forfeited and terminated, may be reinstated, he being alive, within thirty (30) days after the mailing of said notice aforesaid, by the payment of all arrearages at the office of the company in Chicago.

Article VI, section 3, originally as follows:

SECTION 3. Any member may make a deposit in advance for the payment of his assessments, which money shall be used for no other purpose by the company, and in case of the member's death before it is so needed, the unused balance shall be paid back with the policy.

Same amended January 14, 1896, so as to read as follows:

SECTION 3. Any member may make a deposit in advance for the payment of his assessments and dues, which money shall be used for no other purpose by the company, and in case of the member's death before it is so needed, the unpaid balance shall be paid back with the policy.

ARTICLE VII.

Article VII, sec. 1, originally as follows:

Benefits.

SECTION 1. Upon due notice and satisfactory proof of a death of a member of this company the board of directors shall,
30 within sixty (60) days, pay the widow, children or heirs of the deceased member (and in the order named unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership.

Provided, that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment providing it shall not exceed $5,000, and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

Same amended January 8, 1889 (see Record, p. 121), by inserting words underscored below:

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days pay the widow, children, or heirs of the deceased member and in the order named (unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership.

Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000 and all the money paid on the policy in assessments for the first five years, and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the moneys paid on the policy in assessments for the first five years, and so on in the same proportion as to all certificates.

Same amended February 20, 1894, by striking out the proviso. (See Record p. 253.)

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days, pay the widow, children or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership.

Article VII, section 2, originally as follows:

SEC. 2. At the end of each ten years' continuous membership, such members shall receive a bond, bearing three per cent. annual interest, for such a proportion of the surplus on the first day
31 of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

Same amended February 20, 1894 (see Record p. 253) by inserting proviso below:

SEC. 2. At the end of each ten years' continuous membership, such members shall receive a bond bearing 3 per cent. annual interest for such a proportion of the surplus on the first day of the month nearest preceding as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

Provided, that no such bond shall be issued as a dividend except

when the surplus of the reserve or emergency fund is in excess of one hundred thousand dollars.

Article VII, sec. 3, originally as follows:

SEC. 3. Any such bond can be used at par, and accrued interest at any time, without notice, in payments of assessments, and no bond shall run longer than the life of the member; but if unused shall be payable with his policy at death.

Article VII, sec. 4, originally as follows:

SECTION 4. At the end of each five years' continuous membership, the company will, on return of the policy to the home office and the payment of twenty-five cents, endorse on it the amount of assessments paid; which amount is payable at death on the same condition as the policy itself.

Same amended January 8, 1899 (Record p. 121) by substituting "first" for "each."

SEC. 4. At the end of the first five years' continuous membership, the company will, on return of the policy to the home office and the payment of twenty-five cents, endorse on it the amount of the assessments paid; which amount is payable at death on the same conditions as the policy itself.

Article VII, section 4, was repealed January 14, 1896, and the following section was adopted: (See Record p. 303.)

SEC. 4. In event of any member becoming physically disabled, totally and permanently, and upon the determining of such disability by the board of directors or finance committee of this association, there shall be paid to said member upon the receipt and surrender of his policy, in full discharge of all claims, such a part of the face value thereof, as may be agreed upon between the parties to the contract, provided the member shall so request in writing while his policy is in full force, subject to all the conditions
32 and agreements contained therein. The moneys so paid for disability claims are to be taken from and charged to the "death fund."

Article VII, sections 5 and 6 remain unchanged as follows:

SEC. 5. Any member desiring to withdraw shall be furnished under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SEC. 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries, and all accepting any interest in this policy of company do so upon these express terms.

ARTICLE VIII.

Article (*VII*), section 1, originally as follows:

Miscellaneous.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks or opium, shall, upon proof of

the fact to the satisfaction of the board of directors, forfeit all claim upon the company and be dropped from the roll of its members.

Same amended February 20, 1894 (Record p. 252) so as to read as follows:

SECTION 1. Any member who impairs his health by the habitual use of intoxicating drinks, opium or other deleterious drug or substance, or engages in the retail sale of intoxicating liquors, thereby invalidates his policy, and forfeits all claim upon the—

Article VIII, sec. 2, was originally as follows:

SEC. 2. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty (30) days, after due notice that an arbitration is desired, then in this case the party desiring to arbitrate may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select a third party, who shall constitute an authoritative commission to hear and determine the
33 case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the (country) where the home office is located.

Article VIII, sec. 2, was repealed January 13, 1891 (Record p. 176) and the following section was adopted:

SEC. 2. The board of directors shall have power to issue limited-term policies of insurance, such limited term not to exceed five years, on such conditions as the board of directors shall deem for the best interests of the company; provided that no one member shall hold more than one policy on the life term, nor for a larger amount than is provided for in article IV, section 3; and provided further, that *on* one member shall hold a larger sum of insurance than ten thousand dollars in the aggregate, nor more than two policies—one of which may be on the life plan, and the other on the limited-term plan.

Article VIII, section- 3 and 4 remain unchanged as follows:

SEC. 2. This constitution may be amended at any regular meeting of this company by three-fourths (¾) of those voting:

Provided, that all proposed amendments shall first be submitted in writing to the board of directors at a regular meeting; and if five (5) directors approve the said amendments, then the board shall require a notice of the proposed change to be given to all the members of the company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon the proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SEC. 4. The board of directors shall have the power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

EXHIBIT E.

Showing certain statistics in the history of the Knights Templars and Masons' Life Indemnity Company.

	Death losses paid up to January 1, 1898, amounted to	$2,573,599.
	Total amount of money paid in assessments by the deceased members	245,411.
	Amount in addition which must have been paid if the plan of returning all money paid in assessments had been continued	148,089.
	Average membership during past ten years	7,193.
	Average amount received in death fund from one assessment	18,116.
34	Total membership January 1, 1889	5,260.
	Number of these deceased Jan. 1, 1898	441
	Number of these surrendered or forfeited	2,695
	Money paid in assessments by deceased members of class of 5,260 after first five years up to Jan. 1, 1898	91,211.
	Amount paid in assessments after first five years by one Terwilliger of this class holding $5,000, who died in 1898	1,137.50
	Average amount of insurance in force during past eight years	25,000,000.00
	Amount paid for death losses from the death fund to Jan. 1st, 1898	2,489,836.
	Amount contributed to the death fund by the members whose beneficiaries received this	184,058.
	Amount contributed by them to the contingent fund	49,648.
	Bond of John P. Jarman, issued Oct. 23, 1895, being 8.5 per cent. of the amount paid by him	47.85
	Total receipts of the company at last date	2,630,733
	Surplus fund at last date	224,772.
	Amount paid by Jarman	562.83
	Amount of bond	47.85
	Amount of bond if no money had in assessments had been returned	61.91
	Difference of cost of carrying $192 of insurance for five years and a less amount for first five years	14.06

Cost of same by assessing on Jarman's policy each month for the actual amount in force, showing the computation necessary for each assessment to carry the increased amount of insurance:

No. of ass't.	Additional insurance.	Rate per $1,000 age 41-45.	Amount.	Total.
4	4.00	.80	.0032	
5	8.00	.80	.0064	.0096
6	12.00	.80	.0096	.0192
7	16.00	.80	.0128	.0320
8	20.00	.80	.0160	.0480
9	24.00	.80	.0192	.0672
10	28.00	.80	.0224	.0896
11	32.00	.80	.0256	.1152
12	36.00	.80	.0288	.1440

and so on to ass't No. 50 made Sept. 20th, 1890, or applying the formula for the sum of the terms of an arithmetical progression we have:

The first term a equals .0032.

35 The last term, 1, $192 x .80 divided by 1,000 equals .1536.

The number of terms or assessments is 47.

The sum of the terms S equals (.0032 x 1536) 23.5 equals 3.68.

Additional insurance.	Rate per $1,000.	Rate.	Ass'ts.	
1890–1895.		$192		
$192	.95	.1824	71 equals.....	$12.95

Total cost of increased insurance at regular rates..... 16.63

The average percentage of money returned in the form of a bond for succeeding years has been as follows:

May to December,	1894.....	9.6 per cent.
All of	1895.....	9.1
All of	1896.....	9.4 per cent.
All of	1897.....	9.4 per cent.

The total membership January 1, 1896, was 7,509.

Largest amount contributed by any deceased member was $1,732.75.

His beneficiaries received 5,202.75.

Statistics Relating to the Financial History of the Knights Templars and Masons' Life Indemnity Company.

Exhibit E.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Year of—	No. of members.	No. of ass'm'ts.	Average age.	Death fund annual additions.	Death losses annual.	Death losses total.	Death fund balance or deficit.	Contingent fund annual.	Expense annual.	Balance or surplus fund.	Ass'm'ts returned annual.	Per cent. annual death losses.	Ass'm'ts returned total.	Per cent. total death loss.	Death fund balance or deficit if no ass'm'ts returned.
1885.....	1003	2	45.47	$3,070	$441	$441	$2,628	$9,034	8,540	1,669					
1886.....	2365	8	45.08	32,548	27,422	27,863	7,754	31,383	28,420	4,632					
1887.....	3976	10	44.49	78,210	69,745	97,609	16,196	53,493	42,371	15,084	$489	0.7	$489	0.5	$16,682
1888.....	5260	10	44.55	112,363	103,970	201,579	24,578	70,647	53,635	31,596	1,391	1.3	1,880	0.9	26,458
1889.....	6123	11	44.70	156,799	159,771	361,350	21,616	87,913	57,652	63,016	4,371	2.7	6,252	1.7	27,868
1890.....	6541	11	45.09	176,065	187,871	549,222	9,810	92,392	51,200	105,545	9,224	4.9	15,477	2.8	25,287
1891.....	7265	12	44.98	209,074	243,839	793,061	—24,954	108,965	58,677	134,566	8,673	3.6	24,150	3.0	—804
1892.....	7330	15	45.25	270,131	297,561	1,090,622	—52,383	131,237	61,433	178,876	11,579	3.9	35,729	3.3	—16,654
1893.....	7333	15	45.43	279,001	291,454	1,382,077	—64,837	133,792	59,301	242,411	12,154	4.2	47,874	3.5	—16,963
1894.....	7255	15	45.86	272,795	291,642	1,673,720	—83,684	136,507	68,828	294,888	12,559	4.3	60,434	3.7	—23,250
1895.....	7509	15	46.28	282,202	319,233	1,922,954	—120,716	139,611	75,713	325,763	14,332	4.5	74,766	3.8	—45,950
1896.....	7472	16	46.57	307,224	304,108	2,297,062	—117,599	157,861	105,976	391,508					
1897.....	7847	16	46.62	310,362	276,537	2,573,599	—83,873	164,597	135,241	466,692					
1898.....	7253	18	47.01	345,070	461,736	3,035,336	—200,440	177,386	167,827	332,528					

37 Thereafter, to wit, on the 31st day of May, 1899, the following entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY CO. } 2311.

This day come the parties by their attorneys, the plaintiff by E. M. Harber and the defendant by Samuel B. Huston, Alex. B. Huston and Hervey B. Hicks, and this case coming on for final hearing a trial by jury having been duly waived by written stipulation of parties filed herein, the hearing is proceeded with before the court without the intervention of a jury, and is submitted to the court on the agreed statement of facts, and exhibits thereto attached and briefs of counsel.

Thereafter, to wit, on Monday, the 26th day of June, 1899, the same being a day of the regular April term of said court, the following judgment entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois. } 2311.

This case having heretofore come on for final hearing, a jury having been duly waived by a stipulation in writing filed herein, on the agreed statement of facts, and the exhibits thereto attached, the court declares the law to be:

(1st.) That the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question, and that said contract was not, and is not, affected by either of the amendments of the constitution of the defendant company, as shown in Exhibit "D" to the agreed statement of facts; and that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars ($5,000.00) the amount of the certificate of membership; and eight hundred and eleven dollars and eighty-three cents ($811.83) the amount of the assessments paid into the company by the assured, making in the aggregate the sum of $5,811.83, and interest thereon from November 28, 1898, at the rate of six per cent. per annum; and

(2nd.) That the plaintiff is not entitled to have added thereto ten per cent. damages under the provisions of section 5927 of the Revised Statutes of Missouri 1889.

38 It is therefore considered, ordered and adjudged by the court, that the plaintiff, Rosa B. Jarman, recover of the defendant, Knights Templars and Masons' Life Indemnity Company of Illinois, said sum of six thousand and thirteen dollars and thirty cents ($6,013.30) so found to be due, together with her costs herein laid out and expended and have thereof execution.

Thereafter, to wit, on the 1st day of July, A. D. 1899, the following entry appears of record in the above-entitled case:

ROSA B. JARMAN
against
KNIGHTS TEMPLARS & MASONS' L. I. CO. } 2341.

Ordered that the defendant herein be granted sixty days from this date within which to file its bill of exceptions.

Thereafter, to wit, on the 25th day of August, A. D. 1899, defendant filed its assignments of error and petition for writ of error, which said assignment- of error are in words and figures as follows:

In the Circuit Court of the United States in and for the Western District of Missouri, at Kansas City, Mo.

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLAR AND MASONS' LIFE INDEMNITY CO., Defendant.

Comes now the said defendant and humbly complaining shows to the court; that in the record and proceedings in the above-entitled cause, and in the ruling, findings, declarations of law and judgment therein, the court committed manifest error and this defendant assigns the following error-, to wit:

First. That the court erred in declaring the law to be that the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question.

Second. That the court erred in finding for the plaintiff for the reason that under the law pleadings and agreed statement of facts—that is, under all the evidence—the findings should have been for the defendant.

Third. That the said court erred in finding for the plaintiff under the law and the evidence.

Fourth. That the said court erred in declaring the law to be "that said contract was not, and is not, affected by either of
39 the amendments to the constitution of the defendant as shown in Exhibit 'B' of the agreed statement of facts." And erred in adjudging accordingly.

Fifth. That the said court erred in finding "that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars, the amount of the certificate of membership and eight hundred and eleven dollars and eighty-three cents, the amount of the assessments paid to the company by the insured, making in the aggregate the sum of five thousand, eight hundred and eleven dollars and thirty-three cents, and interest thereon from November 28th, 1898, at the rate of six per cent. per annum."

Sixth. That the said court erred in finding and adjudging "that

the plaintiff was entitled to recover, and adjudging a recovery accordingly of the defendant, the sum of six thousand and thirteen dollars and thirty cents, together with her costs herein laid out and expended."

Seventh. That the said court erred in that it did not find under the law and all of the evidence, that the contract of insurance in question is not subject to the provisions of section 5855 of the Revised Statutes of Missouri of 1889 and in not finding that the defendant company was relieved from the payment of the policy in question by the self-destruction of John B. Jarman, except as provided in said policy, and in not confining a recovery to that provided in the policy in case of the self-destruction of the said John P. Jarman, as provided in the policy.

Eighth. That the court erred in finding, holding and adjudging that the contract in question is not affected by the amendments to the constitution of the defendant company, made January 8th, 1889.

Ninth. That the said court erred in finding and adjudging that the contract in question was not affected by the amendments to the constitution of the defendant company, made January 14th, 1896.

Tenth. That under the agreed statements of facts the court erred in finding and rendering judgment for the plaintiff in the sum found, or for any amount whatever, and because that under the evidence the finding should have been for the defendant.

Wherefore, because of the said errors herein assigned the said defendant by its attorneys prays that the said judgment rendered against it may be reversed, annulled and for naught held, and that it be restored to all things which it hath lost by reason of said judgment.

HERVEY B. HICKS,
SAML P. HUSTON,
Attorneys for Defendant.

Said petition for writ of error is in words and figures as follows, to wit:

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLAR AND MASONS' LIFE INDEMNITY CO., Defendant.

To the hon. the circuit court of the United States in and for the western district of Missouri, at Kansas City, and to Honorable John S. Philips, district judge, holding said court:

Now come the said defendant in the above entitled cause, and respectfully petitions by and through Hervey B. Hicks and Samuel P. Huston, its attorneys of record in said cause, and prays a writ of error in said cause; and it further prays that the supersedeas bond herewith presented may be approved, and also prays that a citation issue, directed to the plaintiff aforesaid, in the usual form, and to

allow said writ of error as prayed, and the said defendant herewith presents with this petition for said writ of error, its assignments of error, and prayer for reversal of the judgment rendered in said cause.

HERVEY B. HICKS,
SAML. P. HUSTON,
Attorneys for Defendant.

Thereafter, to wit, on the 28th day of August, 1899, the defendant filed its bill of exceptions in the above-entitled cause, which said bill of exceptions is in words and figures as follows, to wit:

Circuit Court of the United States, Western Division of Western District of Missouri.

ROSA B. JARMAN
vs.
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Defendant.

Bill of Exceptions.

Be it remembered that afterward, to wit, on the 31st day of May, A. D. 1899, at a stated term of said court, begun and held in Kansas City, Missouri, in and for said district, before his honor Judge Philips, district judge, transacting the business of the circuit
41 court, the above case came on to be tried before the said judge, without the intervention of a jury, the parties aforesaid by their counsel, having, according to the statute in such case made and provided, waived a jury, plaintiff being represented by E. M. Harber, Esq., her attorney, and the defendant by Hervey B. Hicks, Esq., its attorney, and S. P. Huston, of counsel, and thereupon the parties submitted the case to the said judge upon the following agreed statement of facts and exhibits, attached thereto or made a part thereof.

* * * * * * *

(Agreed statement of facts appears on page 4 of this record.)

* * * * * * *

(Exhibit A appears at page 8 of this printed record.)

* * * * * * *

(Exhibit B appears at page 14 of this printed record.)

* * * * * * *

(Exhibit D appears at page 23 of this printed record.)

* * * * * * *

(Exhibit E appears at page 33 of this printed record.)

* * * * * * *

The act of Illinois under which the defendant company was organized, entitled

An act to provide for the organization and management of corporations, associations, or societies for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives and devisees of deceased members, or accident or permanent disability indemnity to members thereof. Approved June 18, 1883. In force July 1, 1883.

1. Organization. Purposes of corporation.—1. Be it enacted by the people of the State of Illinois, represented in the General Assembly: That corporations, associations or societies for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs or relatives by consanguinity or affinity devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, and where members shall receive no money as profit and where the funds for the payment of such benefits shall be secured in whole or in part by assessment upon the surviving members, may be organized subject to the conditions, hereinafter provided.

42 2. Who may incorporate.—Statement to be made.—2. Any five or more persons, citizens of the United States, a majority of whom shall be *bona fide* citizens and voters of this State, may associate themselves together as a body corporate, for which purpose they shall make, sign and acknowledge, before any officer authorized to take acknowledgments of deeds in this State, a certificate of association, in which shall be stated the name or title by which such corporation, association or society shall be known in law; the location of its principal office which office must be located in this State; the name and residence of the incorporators; the object of the corporation, with its plan of doing business, clearly and fully defined; the number of its directors, trustees or managers, and the names of those selected to serve until its first annual meeting; the limits as to age of applicants for membership, and whether medical examinations are required; and that *bona fide* applications have been secured for at least two hundred thousand dollars by not less than two hundred persons, which certificate of association shall be submitted to the auditor of public accounts, who shall carefully examine the same; and if he shall find that the objects and purposes are fully and definitely set forth, and are clearly within the provisions of this act, and that the name or title is not the same or does not so closely resemble a title in use as to have a tendency to mislead the public, shall approve the same. If, for either of the aforesaid, or other good and sufficient reason, the said auditor shall be unwilling to approve the certificate of association, he shall immediately inform the incorporators of the fact, stating his objections fully in writing. If the certificate is sufficiently satisfactory, the said auditor shall indicate his approval thereof under his hands and official seal, and shall forthwith file the same, together with certificate of association and other papers accompanying it, in the office of the secretary of state.

3. Certificate of organization.—3. Upon the filing of the papers as aforesaid, the secretary of state shall issue a certificate of organ-

ization of the corporation, association or society, making as a part thereof a copy of all papers filed in his office in and about the organization thereof, and duly authenticated under his hand and seal of the State; and the same shall be recorded in the book for that purpose in the office of the recorder of deeds of the county in which the principal place of business of such corporations, association or society is located.

4. Organization—By-laws—Directors—powers of.—4. A corporation, association or (societies) organized under the provisions of this act shall be a body corporate and politic, by the name stated
43 in the certificate of organization, and by that name, they and their successors may have succession, and shall be persons in law capable of suing and being sued; and may have power to make and enforce contracts in relation to the legitimate business of their corporation association or society; may have and use a common seal, and may change or alter the same at pleasure, and they and their successors in their corporate name shall in law be capable of taking, purchasing, holding and disposing of real and personal estate for the purpose of their association or society; may make by-laws not inconsistent with the constitution and laws of this State, or of the United States; which by-laws shall define the manner and form of electing directors, trustees or managers and officers of the corporation, association or society, and the qualifications and duties of the same with terms of office not exceeding three years; and also the qualifications and privileges of the members thereof.

5. Number and election of directors.—5. The affairs of all corporations, associations or societies organized or doing business under the provisions of this act, shall be managed by not less than five directors, trustees or managers, a majority of whom shall be residents of the State of Illinois, who shall be elected from and by the members at such time and place, and for such period, not exceeding three years, as may be provided for in the by-laws, and may be eligible for re-election provided, that as near as practicable, an equal number shall be elected each year. Whenever directors, trustees or managers shall be elected, a certificate under the seal of the corporation, giving the name and residence of those elected, and the term of their office, shall be recorded in the office of the recorder of deeds where the certificate of organization is recorded. Vacancies in the board of directors, trustees or managers, shall be filled in the manner provided in the by-laws and upon filling any vacancy a like certificate shall be recorded.

6. Assessment notices.—6. Assessment notices sent to members by any association or corporation doing business under the provisions of this act, shall state the object or objects for which the money to be collected is intended, and no part of the funds collected for the payment of death benefits shall be applied for any other purpose.

7. Certificate of membership—Fraud—Penalty.—7. Any agent, physician or other person who shall knowingly secure or cause to be secured a certificate of membership on any person without his knowledge or consent, or by means of misrepresentation, false, fraudulent or untrue statements, be instrumental in securing a cer-

tificate of membership on any aged or infirm person, or in
44 restoring to membership any person not in an insurable condition, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum not less than $100 nor more than $1,000 or imprisoned in the county jail not less than thirty days or more than one year, or both, in the discretion of the court; and said certificate or renewal, so secured, shall be absolutely void.

8. By-laws—Surplus fund—Investment—Increase—Use of.—8. All corporations, associations or societies transacting business under the provisions of this act, may provide by by-laws for the accumulation of a surplus, general or guarantee fund, which may be invested only in the corporate name of the association or society, in the United States, State, county, city or other first-class convertible bonds or stocks upon which interest has not been in default. Such funds, when so set apart and so invested, shall with the increase thereof, belong to such corporations, associations or societies and not to the directors, trustees, managers or officers thereof; and shall be used only for mortuary benefits, without assessment, or applied in payment of the future assessments or otherwise used for the promotion of the object or objects for which said funds are specially provided and set apart, and such use shall not be deemed or construed to mean a profit received by members within the meaning of the statutes of this State.

9. Corporation not deemed an insurance company—To make statement—What they contain—Fees of auditor.—9. All corporations, associations or societies organized under the provisions of this act, or that have heretofore been organized within this State, under any charter, compact or agreement or statute of this State, for the purpose of furnishing life, accident or permanent disability indemnity or mortuary benefit on the assessment plan, in accordance with the provisions of the first section of this act, shall not be deemed insurance companies, nor subject to the laws of this State relating thereto; but shall comply with and conform to all the requirements and provisions of this act; and shall by their president and secretary or like officers, make to the auditor (—) public accounts, annually, on or before the first day of March in each and every year, a statement under oath, for the year ending on the 31st day of December next preceding, upon blanks furnished by the said auditor, which blanks shall be such as will show its financial condition, assets, liabilities, total amount of indemnity in court, number of members, number whose memberships have terminated during the year and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid upon each certificate, and shall pay to the said auditor upon filing said certificate a fee of $5.00 and the said auditor shall publish this statement in his annual report;
45 provided that nothing herein contained shall be held to apply to any organization of a purely social, religious or benevolent character where no commissions are paid and salaried officers or agents employed; nor to any local association or society organized

under, or subject to the control of a grand or supreme body, nor to any secret organization having subordinate lodges or councils which have been organized under the laws of this or any other State and which is now permitted to do business in this State.

Remainder of act omitted.

A copy of the certificate of authority issued to defendant company by the insurance department of Missouri to transact the business of insurance in Missouri on the assessment plan under an act entitled "Insurance companies on the assessment plan." Laws 1887, p. 199.

Insurance department of the State of Missouri.

Certificate of Authority.

It is hereby certified that the Knights Templars and Masons' Life Indemnity Company of Chicago, Illinois, has complied with the requirements of the insurance laws of this State, and is hereby authorized, subject to the provisions thereof, to do the business of life insurance on the assessment plan in the State of Missouri until the first day of February, one thousand eight hundred and eighty-nine.

In witness whereof, I, Alfred Carr, superintendent of the insurance department of the State of Missouri, have hereunto set my hand and affixed my seal of office in duplicate at city of St. Louis, this eighteenth day of June, 1888.

ALFRED CARR,
Superintendent.

Similar certificates were issued to said company in each year subsequent to 1888, up to and including 1897.

Senate bill No. 105 as originally introduced.

Extracts from the Senate Journal and House Journal of 39th General Assembly of Missouri, 1897, relating to senate bill No. 105, also showing section 5869 as it was before the amendment of 1897 and as it is now, amended,

Was offered and read in evidence by the defendant.

Senate bill No. 105 as originally introduced.

Insurance: Insurance Companies on the Assessment Plan.

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance com-
46 panies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, chapter 89, of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon for such misrepresentation.

SECTION 1. Company shall annually make statement of its affairs to the superintendent of the insurance department—duty of the superintendent of the insurance department.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. That section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance companies on the assessment plan," be and the same is hereby repealed and the following new section to be known and designated as section 5869 of article 3, chapter 89 of the Revised Statutes of Missouri of 1889 be enacted in lieu thereof:

SECTION 5869. Every corporation doing business under this article, shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs, for the year ending on the preceding 31st day of December, and the said superintendent in person or by deputy, shall have the power of visitation of and examination into the affairs of such corporation, which are conferred upon him in the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to, and required to conform to the provisions of sections 5912, 5849 and 5850 of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said section contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth and provided.

Ninth day, Monday, January 18, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Major introduced senate bill No. 105, entitled

"An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu
47 thereof to be known and designated as section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon, for such misrepresentation."

Which was read first time and 75 copies ordered printed.

Fourteenth day, Monday, January 25, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following senate bills read the second time and referred to committee as follows:

Senate bill No. 105 entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on

the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentation."

To committee on insurance and insurance companies.

Eighteenth day, Friday, January 29, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Childers, from the committee on insurance and insurance companies, submitted the following report, which was read:

Mr. President: Your committee on insurance and insurance companies, to which was referred senate bill No. 105, entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation."

Begs leave to report that it has examined the same and recommends that it do pass, with the accompanying amendment:

Amend senate bill No. 105 by inserting between the word "section" and the figures "5912" in the 28th line of said original senate bill, the figures "5855;"

Which was read first and second times and adopted.

48 Nineteenth day, Monday, February 1, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate bill No. 105 was taken up, and on motion of Senator Major, was ordered engrossed and printed.

Twenty-first day, Wednesday, February 3, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Miller, from the committee on engrossed bills, submitted the following report, which was read:

Mr. President: Your committee on engrossed bills, to which was referred senate bill No. 105, entitled:

"An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled 'Insurance companies on the assessment plan' and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89

of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation."

Begs leave to report that it has compared the same, and finds it to be truly engrossed, and that the printed copies thereof furnished to the senators are correct.

Twenty-second day, Thursday, February 4, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate bill No. 105, entitled:

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 entitled "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889 relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations,

Was taken up, read third time, and passed by the following vote:

49 Yeas—senators:

Anderson,	Klene,	Marshall,
Seaber,	Burkhead,	Lancaster,
Martin,	Vanduver,	Busche,
Landrum,	Powers,	Wells,
Childers,	Madison,	Schweickhardt,
Young.	Hohenschild,	Major, 18.

Nays—senators:

Brewster,	Goodykoontz,	Miller,
Orchard,	Davisson,	McClintic,
Mott,	Williams,	Drum, 11.
Matthews,	O'Bannon,	

Absent with leave—senators:

Ballard,	Lyons,	Morton,
Peers,	Gray, 5.	

The president declared the bill passed.

The title was read and agreed to.

Senator Major moved to reconsider the vote by which the bill was passed.

Senator Madison moved to lay that motion on the table.

The latter motion prevailed.

Twenty-third day, February 4, 1897.

House met pursuant to adjournment.

Mr. Avery in the chair.

The following message was received from the senate through its secretary, Mr. Roach:

Mr. Speaker: I am instructed by the senate to inform the house that there has been introduced into and passed by the senate, senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89, of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3, chapter 89, of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance and defense thereon for such misrepresentations:

In which the concurrence of the house is respectfully requested.

Which was read.

Thirty-first day, Monday, February 15, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Senate bill No. 105, was read second time and referred to committee on insurance.

50 Thirty-sixth day, Saturday, February 20, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Mr. Miller, from the committee on insurance, submitted the following report:

Mr. Speaker: Your committee on insurance to which was referred senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89, of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known as section 5869, article 3, chapter 89 of the Revised Statutes for Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentations;"

Begs leave to report that it has examined the same and recommends that it do pass.

Which was read.

Forty-eighth day, Saturday, March 6, 1897.

House met pursuant to adjournment.

Speaker Farris in the chair.

Mr. Bohart, from the committee on calendar, submitted the following report:

Mr. Speaker: Your committee on rules begs leave to report the following bills for calendar of the 6th inst., for third reading and passage:

Senate bill No. 105; which was read.

Fiftieth day, March 9, 1897.

Senate bill No. 105, entitled, An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri for 1889, entitled, "Insurance companies on the assessment plan" and to enact a new section in lieu thereof, to be known and designated as section 5869, article 3, chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation,"

Was read third time and passed by the following vote: Ayes—88. Nays—26. Absent—16. Absent with leave—9. Sick—1.

(Names of members are given in the journal, but omitted in this copy.)

Title to senate bill No. 105, was agreed to.

Mr. Whitecotton moved that the vote by which senate bill No. 105 was passed be reconsidered, and that the motion be laid on the table. Which was carried.

51 Forty-seventh day, Tuesday, March 9, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following messages were received from the house of representatives through its chief clerk, Mr. Green, which were read:

Mr. President: I am instructed by the house to inform the senate that the house has taken up and passed senate bill No. 105, entitled:

An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations.

Forty-eighth day, Wednesday, March 10, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senator Orchard, from the committee on enrolled bills, submitted the following reports, which were read:

Mr. President: Your committee on enrolled bills, to which was referred senate bill No. 105, entitled,

An act to repeal section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations

made in securing a policy of insurance, and defense thereon, for such misrepresentation.

Begs leave to report that it has compared the same, and finds it to be truly enrolled.

Forty-ninth day, Thursday, March 11, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

Senate enrolled bill No. 105, entitled,

An act to repeal section 5869 of article 3, of chapter 89 of the Revised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu
52 thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations:

Was taken up and the president announced that the same had passed both branches of the General Assembly; that all other business would be suspended, the bill read at length, and that unless objection be made, he would sign the same, to the end that it (*became*) a law, and directed the secretary to read the bill. The bill was read at length by the secretary, and no objection being made, the presiding officer, in the presence of the senate, in open session, and no other business intervening, affixed his signature thereto. The bill was then taken to the house of representatives, signed by the speaker, and immediately presented to the governor by the secretary for his approval.

Fifty-second day, Thursday, March (*11*), 1897.

All business being suspended, senate bill No. 105, was then read at length, and no objection being made, the speaker, in open session, in the presence of the house, affixed his signature thereto, as provided by the constitution.

Fifty-second day, Monday, March 15, 1897.

The senate met pursuant to adjournment.

The president in the chair.

A quorum present.

The following messages were received from the governor through his private secretary, Mr. Moore; which were read:

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,
JEFFERSON CITY, *March* 15, 1897.

To the president of the senate.

SIR: I have the honor herewith to return to the senate, with my approval indorsed thereon, the following bills:

Senate bill No. 105, entitled,

An act to repeal section 5869 of article 3, of chapter 89 of the Re-

vised Statutes of Missouri of 1889, entitled, "Insurance companies on the assessment plan," and to enact a new section in lieu thereof, to be known and designated as section 5869 of article 3 of chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies, and misrepresentations made in securing a policy of insurance, and defense thereon for such misrepresentations.

Respectfully, LON V. STEPHENS, *Governor.*

53 SECTION 5869. Statement of affairs to be made: Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation which (*are*) conferred upon him in the case of life insurance companies by the laws of this State; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of section 5912 of the Revised Statutes of Missouri, 1889; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth. (Laws 1887, p. 199.)

* * * * * * *

SECTION 5869. Every corporation doing business under this article shall annually, on or before the first day of February, return to the superintendent of the insurance department in such manner and form as he shall prescribe, a statement of its affairs for the year ending on the preceding 31st day of December, and the said superintendent, in person or by deputy, shall have the power of visitation of and examination into the affairs of any such corporation, which (*are*) conferred upon him in the case of life insurance companies, by the laws of this State; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of section- 5855, 5912, 5849 and 5850, of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said sections contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth and provided. (Laws 1887, p. 199; Laws 1897, p. 130.)

The foregoing agreed statement of facts and exhibits were all the evidence submitted to the court, and thereupon the said case was taken under advisement.

And afterwards, to wit, on the 26th day of June, 1899, the said judge declared the law to be as follows:

54 UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, April Term, 1899.

MONDAY, *June 26th, A. D.* 1899.

ROSA B. JARMAN
against
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois. } 2341.

This case having heretofore come on for final hearing a jury having been duly waived by stipulation in writing filed herein, on the agreed statement of facts and the exhibits thereto attached, the court declares the law to be:

(1st.) That the contract of insurance in question was and is subject to the provisions of section 5855 of the Revised Statutes of Missouri, of 1889, which was section 5982 of the Revised Statutes of 1879, in force at the time of the issue of the policy in question; and that said contract was not and is not affected by either of the amendments of the constitution of the defendant company as shown in Exhibit "D" to the agreed statement of facts; and that the plaintiff is entitled to recover judgment against the defendant for the sum of five thousand dollars ($5,000) the amount of the certificate of membership; and eight hundred and eleven dollars and eighty-three cents ($811.83) the amount of the assessments paid into the company by the assured, making in the aggregate the sum of $5,811.83 and interest thereon from November 28th, 1898, at the rate of six per cent. per annum; and,

(2nd.) That the plaintiff is not entitled to have added thereto ten per cent. damages under the provisions of section 5927 of the Revised Statutes of Missouri, 1889.

It is therefore considered, ordered and adjudged by the court that the plaintiff, Rosa B. Jarman, recover of the defendant, Knights Templars and Masons' Life Indemnity Company of Illinois, said sum of six thousand and thirteen dollars and thirty cents ($6,013.30) so found to be due, together with her costs herein laid out and expended and have thereof execution.

To each of the declarations of law in the first paragraph and the findings of the court therein and to the entry of judgment, counsel for the defendant then and there excepted.

This bill of exceptions is presented and allowed and signed this 26th day of August, 1899.

(Signed) JNO. F. PHILLIPS,
United States Dist. Judge.

55 On the same day, to wit, on the 28th day of August, 1899, a bond for writ of error was filed in the above-entitled cause.

Said bond is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *set:*

Know all men by these presents, that we, the Knights Templar and Masons' Life Indemnity Company as principal, and the American Surety Company, as surety, are held and firmly bound unto Rosa B. Jarman in the full and just sum of seven thousand dollars, to be paid to the said Rosa B. Jarman, her heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of August, in the year of our Lord, one thousand eight hundred and ninety-nine.

Whereas, lately, at the April term of the circuit court of the United States, for the western division of the western district of Missouri, in a suit depending in said court between Rosa B. Jarman, plaintiff, and The Knights Templar and Masons' Life Indemnity Company, defendant, judgment was rendered against the said defendant and the said defendant has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Rosa B. Jarman, citing and admonishing her to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said Knights Templar and Masons' Life Indemnity Company shall prosecute said writ of error to effect, and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

KNIGHTS TEMPLAR & MASONS'
LIFE INDEMNITY CO., [SEAL.]
By S. P. HUSTON. [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By E. F. SWINNEY,
Resident Vice-President. [SEAL.]

Signed and sealed in presence of
[SEAL.] Attest: J. W. BOWMAN,
Resident Ass't Secretary.

The above bond is hereby approved and ordered to be filed and made a part of the record.

This 26th day of August, 1899.

(Signed) JNO. F. PHILIPS, *Judge.*

56 STATE OF MISSOURI,)
County of Jackson,) *ss:*

J. W. Bowman, being duly sworn, says: That he is resident ass't secretary at Kansas City, of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and — virtue

of the laws of the State of New York; and has duly complied with all the *the* requirements of the laws of said State, applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled, "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company is worth $2,500,000.00 over and above all its debts and liabilities and such exemptions as may be allowed by law.

J. W. BOWMAN.

Subscribed and sworn to before me this 25th day of August, 1899.

[SEAL.] R. F. PORTER,
Notary Public, Jackson County, Mo.

American Surety Company of New York; general offices, 100 Broadway; incorporated Apr. 14, 1884.

Financial Statement March 31, 1899.

Resources.

Real estate and improvements	$3,213,930.66	
Stocks and bonds	953,626.60	
Bills receivable	158,280.12	
Cash in banks and offices	697,061.31	
Premiums in course of collection	182,270.38	
Accrued interest and rents	32,809.37	
		$5,237,978.44

Liabilities.

Bills and accounts payable	$25,093.67	
Claims in process of adjustment	174,259.39	
Premiums reserve requirements	632,429.53	
Undivided profits	906,195.85	
Surplus	1,000,000.00	
Capital stock	2,500,000.00	
		$5,237,978.44

57 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The regular quarterly meeting of the board of trustees of the American Surety Company of New York was held at the company's office, No. 100 Broadway, in the city of New York, on Wednesday, January 18th, 1899, at 12 o'clock noon.

The president assumed the chair.

On motion David B. Sickels was elected secretary. * * *

The secretary read the report of the nominating committee, as follows:

To the board of trustees of the American Surety Company of New York.

GENTLEMEN: The committee appointed by the trustees of this company, at their meeting held Wednesday, December 28th, 1898, for the purpose of nominating officers of the company for the ensuing year, beg leave to report as follows:

We nominate for the ensuing year the following gentlemen as resident vice-president-, at Kansas City, Missouri: A. A. Tomlinson, George F. Putnam.

Resident assistant secretaries, at Kansas City, Missouri: J. W. Bowman, Robert F. Porter.

* * * * * * *

Whereupon, on motion, the secretary was instructed to cast one ballot on behalf of the trustees present, and the aforementioned officers * * * as recommended by the nominating committee were declared to have been unanimously elected to their respective offices for the ensuing year.

The following resolutions were adopted:

"Resolved, That the resident vice-presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and deliver and attach the seal of the company to any and all obligations for or on behalf of the company, such obligations, however, to be attested in every instance by the resident assistant secretary."

At a meeting of the executive committee of the American Surety Company, of New York, held at the office of the company, No. 100 Broadway, in the city of New York, on June 7th, 1899, the following resolution was adopted:

"Resolved, That E. F. Swinney of Kansas City, Missouri, be and he is hereby constituted and appointed a resident vice-president, of the company at Kansas City, aforesaid, with full power and authority to execute bonds on behalf of the company in its business and in accordance with its charter."

58 STATE OF NEW YORK, }
County of New York, } *ss.:*

I, William S. MacKellar, assistant secretary of the American Surety Company of New York, do certify that I have compared the foregoing extracts and transcripts from the record book of the board of trustees, of the American Surety Company of New York, with the original record of said board, and that the same are correct extracts and transcripts therefrom, as they appear of record and are set forth and contained in said record book, and I further certify that I have compared the foregoing resolutions with the original thereof, as recorded in the minute book of said company, and do certify that the same are correct and true transcripts therefrom, and of the whole of said original resolutions.

Given under my hand and the seal of the company, at the city of New York, this twenty-seventh day of June, 1899.

[SEAL.] W. S. MACKELLAR,
Assistant Secretary.

The opinion filed June 26th, 1899, in the above-entitled cause, is in words and figures, as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY of Illinois, Defendant. } No. 2341.

Opinion by PHILIPS, *D. J.*:

This case was submitted to the court without the intervention of a jury on the agreed statement of facts with some additional evidence; and the controversy briefly stated grows out of substantially the following state of facts:

The defendant is a life insurance company, doing business on what is known as the assessment plan, by which it issues policies of insurance to Masons who become members of the company on application. In 1885 it issued a policy to John P. Jarman, whereby, in case of death, and proof thereof, it promised to pay to his wife or children or heirs in the order named, the sum of five thousand dollars and all assessments paid to the company by the assured. In 1898 the assured died by a gunshot wound, inflicted by himself while insane. This suit is brought by his wife to recover on the policy. The principal matters of defense interposed by the defendant are (1) that the policy exempts the defendant from liability for death resulting from an act of suicide; and (2) if it should be
59 held by the court that said provision of the policy was void under the statute of Missouri in force at the time of the issue of the policy declaring that the fact of suicide should be no defense to a suit on a life policy then the defendant is not required to pay to the plaintiff the sum of all the assessments paid in by the assured during his lifetime, for reasons which fully appear in this opinion.

The first question, therefore, for decision arising on the facts and evidence submitted is, does the fact that the insured died by his own hand defeat the right of recovery on this policy? At the time of the issue of the policy,—which admittedly was a Missouri contract—the following provision of the Missouri statute was in force:

"In all suits upon policies of insurance on life hereafter issued by any life insurance company authorized to do business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." (Section 5982, Revised Statutes of Missouri of 1879; section 5855, Revised Statutes of Missouri of 1889.)

The language of the statute is comprehensive. It applies to all "policies of insurance on life hereafter issued by any life insurance company doing business in this State." On a life policy issued by

this same defendant, tried in this court, it was distinctly held by Judge Caldwell on the circuit (Berry *vs.* Knights Templars & Masons' Life Indemnity Company, 46 Fed. 439) that this company at the time in question was engaged essentially in the life-insurance business and nothing else. This ruling was affirmed by the court of appeals (50 Fed. 511.) It was as distinctly further held in this case that said section of the Missouri statute applied to such policies, and cut off the defense of death by suicide. The policy sued on in that case was issued in 1885, and the act of suicide was committed in November, 1889. As in the case at bar, the act of suicide was subsequent to the enactment of the statute, of 1887, now section 5869 Revised Statutes of Missouri of 1889, relied on by defendant to avoid the operation of said section 5855. Said act of 1887, after directing that all insurance companies doing business in the State should make certain returns to the insurance department touching the state of its affairs and subjecting it to visitation and examination, contained the following clause:

60 "And all such foreign companies are hereby declared to be subject to, and required to conform to the provisions of section 5912, of the Revised Statutes of Missouri of 1889; provided always that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth."

The only feature which in this respect differentiates the Berry case from this, is the fact that in the former it did not appear from the evidence that the defendant company had ever complied with the provisions of the act of 1887, or that it was doing business in Missouri under the requirements and liabilities imposed by the act; while in the case at bar it does appear that in 1888 the company complied with said statute, attempting to do business in the State on the assessment plan.

It is to be conceded to defendant that as to policies issued on the assessment plan subsequent to the statute of 1887 and prior to 1897, said section 5855, denying the defense of suicide does not apply. (Haynie *vs.* Knights Templars & Masons' Indemnity Company, 139 Mo., 416.) The policy in the Haynie case was issued in 1888, and the insured committed suicide in 1893.

It is on said act of 1887 that defendant's counsel have builded a most elaborate argument, on the assumption that this act superseded and repealed the provisions of said section 5855 in respect of assessment companies; and therefore the rights of the parties in this action are to be determined as if said section 5855 had been expunged from the statutes at the time the cause of action arose in this case. In support of this contention reliance is placed upon rulings akin to that in Ewall *vs.* Daggs, 108 U. S., 143, which was, in effect, that when the right of a party to a given contract to avoid it on the ground of a statutory enactment based upon the declared public policy of the State, where such right pertains rather to the remedy than an essential element of the contract, inducing its execution, may, by subsequent act of the legislature, be entirely taken away,

the parties are remitted to the terms of the contract as expressed on its face. Judge Shiras, who wrote the opinion of the court of appeals in the Berry case, declined to pass affirmatively upon the correctness of this contention, because it did not appear from the record before him that the company had complied with the provisions of the act of 1887, entitling it to plead exemption from the operation of said section 5855. But it is quite apparent from the trend of his observations that the inclination of his mind was against the contention of the defendant, if the requisite facts had appeared. In that connection he said:

61 "Before this question can arise it must be made clear that the legislature of the State intended to repeal by the act of 1887, the provisions of section 5982 (now section 5855), in its applications to policies previously issued by companies doing business under the assessment plan; and in our judgment, the intention to repeal the section in this particular is not made clear. In the first place, the legislature of Missouri has not repealed section 5982 (now section 5855). It is still the law of the State that companies engaged in the business of life insurance shall not be permitted to exempt themselves from liability for death by suicide not contemplated when the application for its insurance is made."

His assertion was correct. The act of 1887 only exempted assessment companies from the operation of section 5855. In other words it only suspended its operation in its application to assessment insurance companies; and in view of the general law, and especially of the constitution of Missouri, the act of 1887 only had, and could only have, a prospective operation, and in no degree affected antecedent policies issued by such companies.

Counsel misconceive the character of section 5855. It is something more than a mere declaration of the State as to its public policy prohibiting such contracts, and affecting merely the remedy, which the legislature might at will revoke, leaving in force the provisions of a policy that an act of suicide could be pleaded to defeat recovery thereon. On the contrary, this statute became a constituent element of the contract itself between the parties, constituting a part of the consideration for entering into the contract. In contemplation of law it was the same as if it had been written into the face of the policy, that in case of suit to enforce the payment of the stipulated sum, the defendant should not plead thereto that the insured committed suicide, unless it should be shown that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary should be void. Judge Dillon, in White *vs.* Ins. Co., 4th Dillon, 177, speaking of another section of this same statute respecting the effect of misrepresentations made in obtaining or securing the policy, said:

"We are of opinion that policies of insurance issued and delivered in Missouri after that act took effect fall within its prospective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that the laws in existence are necessarily referred to in all contracts made under such laws, and that no contracts can change the law."

62 This same principle was announced by Chief Justice Sherwood, in State to the use of Wolff *vs.* Burning, 74 Mo., 87: "For whatsoever the law annexes as the incident of a contract, whether granting a privilege or announcing a prohibition, is as much part and parcel thereof as though written therein or endorsed thereon." (See also Reed *vs.* Painter, 129 Mo., 680.) Again in the recent case of Cravens *vs.* New York Life Ins. Company, 50 S. W., 519–524, the supreme court say: "Being a Missouri contract, the statute then in force with respect to the subject-matter of the contract entered into and became a part thereof as much so as if copied therein." We may conclude this part of the discussion by the application of the appropriate language of Mr. Justice Gray in Equitable Life Society *vs.* Clements, 140 U. S., 233, which went from this court:

"The statute is not directory only or subject to be set aside by the company with the consent of the assured; but it is mandatory and controls the nature and terms of the contract into which the company may induce the assured to enter."

The provisions of section 5855, being a constituent part of the contract of insurance, it would not have been competent, even had it so attempted, for the legislature to destroy the protecting provisions of this statute by a subsequent repeal thereof (which it does not attempt to do), as it relates to antecedent policies of insurance. This for the obvious reason that the Constitution of the United States prohibits the State from passing any law impairing the obligation of contracts. As said in McCracken *vs.* Hayward, 2d Howard, 612: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of obligation to perform them by the one party and the right acquired by the other. * * * If any subsequent law affect to diminish the duty or impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence any law which in its operation amounts to a denial or obstruction of (*of*) the rights accruing by the contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

The act of 1887 was not retrospective in its operation. "It is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly a legislative intention that it should operate retrospectively. And some States have deemed it just and wise to forbid such laws altogether by
63 their constitution." Cooley Con. Lim., 5th ed., p. 456. The constitution of Missouri, section 15, article 2, declares, "that no *ex post facto* law nor law impairing the obligation of contracts, or retrospective in its operation, etc., can be passed by the General Assembly."

But what is still more fatal to the position of defendant is the fact that in March, 1897, the legislature of Missouri, (Laws of Missouri, 1897, p. 130), repealed said act of 1887, section 5869 aforesaid of the Revised Statutes of Missouri of 1889, and expressly subjected

insurance companies on the assessment plan to the provisions of said section 5855, thus clearly showing the legislative construction that by the act of 1887 said section 5855 was not repealed, but such companies were only for the time being exempted from its operation. Clearly enough, the mere repeal of said act of 1887 would have remitted such insurance companies, and such policies of insurance as the one in question, to the operation of section 5855, without the affirmative provision expressly applying it to such companies. The effect, therefore, of this act of 1897 was to place this contract of insurance in the precise attitude in which it stood in 1885, when the policy was issued, and would avail this plaintiff, the death of the assured occurring subsequent to the act of 1897. At all events it effectually meets the argument of counsel. If the act of 1887 was a recall of the public policy of the State respecting such companies, as declared in said section 5855, this public policy was reasserted by the act of 1897. In this respect, the facts of this case are essentially different from that class of cases cited by counsel in which the statutes in question had been repealed. The result is that the first question arising on this record must be answered in the negative.

The remaining question for consideration is as to the amount of recovery on this policy. On its face the policy provides that within 60 days after notice and proof of death the company will pay the widow, children, etc., in the order named, the sum of $5,000, and all money paid by the assured in assessments subject to the limitation as to the amount of such payment, provided in section 1 of article 7 of the constitution of the company, printed on the back of the policy, which section is as follows:

"Upon due notice and satisfactory proof of death of a member of this company, the board of directors shall, within 60 days, pay the widow, children or heirs of the deceased member (and in the order named unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership; provided, that the policy of membership for
64 $5,000 shall be good for all money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all money paid on the policy in assessments."

It is admitted by the agreed statement of facts that at the time of the death of the deceased he held a policy in the company for $5,000.00 and that the assessments paid by him amounted to $811.83. Clearly enough, therefore, without something more, the amount of recovery on this policy would be $5,000 plus the sum of the assessments thereon, to wit: $811.83, with interest at six per cent. per annum from the 28th day of November, 1898, the day agreed upon when the right of action accrued. To avoid this conclusion the defendant invokes the following, found in the application of the assured for membership:

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may by the constitution be changed hereafter."

The application further stated that "the application on which

this policy is issued is made a part of this policy by reference thereto."

It is claimed by defendant that in pursuance of the authority thus conferred, upon it by the assured, on the 8th day of January, 1889, the board of directors amended article 4, section 3, of the constitution so as to read:

"Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars, and all money paid in assessments upon the policy for the first five years;" and sections of article 7, were amended conformably thereto; by which amendment the amount of assessments to be returned to the beneficiary on the death of the assured was only "for the first five years" instead of all the assessments paid by the assured as provided in the policy. So that under this amendment the amount of assessments to be refunded would be $192.00 instead of $811.83, as provided on the face of the policy.

Having experimented with this change, in January, 1898, the board of directors took an additional long step in the same direction, by striking out entirely the provision for paying back assessments, under which defendant claims it is relieved from paying this plaintiff any assessments collected from the assured.

The question to be decided is, Was it reasonably within the contemplation of the parties in executing the contract of insurance that such changes might be made in the regulations and
65 constitution of the company by its board of managers as to actually diminish the amount agreed to be paid to the wife, children or heirs of the assured on his death? It has been fitly said that common sense and good faith are the leading characteristics of all interpretation of contracts. If the board of directors was authorized to go thus far, where is the boundary line to be placed beyond which it may not go in cutting down the value of the policy? If the extent of such diminution rests absolutely in the discretion or judgment of the governing board, it can as well say that the company will pay to the wife or children only $1,000 or a less sum, on the death of the assured. Such a construction is so at variance with the conception of an honest mind as to challenge its correctness. Perceiving the force of this suggestion, counsel for the company place their ultimate argument upon the ground that the proper limitation of such dividing line — between what is reasonable and what is unreasonable. It must readily occur to the judicial mind that such ground is dangerous quicksand; for the jury or court, whichever might be called upon to determine this question, would be in danger of making for one or the other, or both of the parties to this policy a contract upon which their minds never met. This is fitly illustrated by the reasoning of counsel whereby the amendment of 1889 is justified in reducing the recovery for paid assessments to those paid within the first five years; and by the same process of reasoning the amendment of 1898 is justified, whereby the whole provision of the contract allowing recovery of any assessments whatever, is wiped out. And it is not clear to the average mind why the same specious logic might not be employed to justify an amend-

ment whereby instead of paying the sum of $5,000, only $4,000.00 should be paid; on a like assumption that such reduction of liability would lessen the amount of assessments made upon the assured to meet such losses and would produce greater equality among the policy-holders who received their policies prior and subsequent to such amendments, and further strengthen the financial basis on which the institution rests.

There is great common sense in the utterance of the court in Walsh *vs.* Hill, 38 Cal., 481, that "in the construction of written instruments we have never derived much aid from technical rules of the books. The only rule of much value—one which is frequently shadowed forth, but seldom, if ever, expressly stated in the books—is to place ourselves as nearly as possible in the seats which were occupied by the parties at the time the instrument was executed; then taking it by the four corners, read it."

66 The underlying vice of defendant's argument is that the assumed methods of working out the conception of insurance experts for better sustaining the business of the company, is a refinement which could be said to have been in the reasonable anticipation or expectation of the policy-holder at the time he was induced to take his membership. On the face of the policy he was assured that in the event of his death his wife or children would receive $5,000 and all the sums he might pay in by way of assessments. And it may well be imagined how this provision was made attractive to Mr. Jarman by the persuasive tongue of an insurance solicitor. For on its face the allurement was held out to him, not only that his family should receive $5,000, but that whatever assessments should be imposed upon him to raise the necessary funds for paying other losses would be returned to his family. No such possibility was apparent or stated to him by the agent of the company as is sought to be worked out by the experts to justify either of said amendments. No such amendments had ever before been made to the constitution of this company; and the conception even of the experts of the company came four years later. As was said by the supreme court of this State: "It is a rule of construction that the promissor is bound according to the sense in which he apprehended that the promisee received his proposition." Bruner *vs.* Wheaton, 46 Mo., 363. And while the rule may at times be abused in its application it certainly is a correct one as applied to this instance, that the application for the policy of insurance having been drawn by astute counsel of the company, who study with care to make it favorable to the company, and employ technical terms unfamiliar to the assured" it is only a fair rule which the courts have adopted to resolve any doubt or ambiguity in favor of the insured against the insurer." It is not too much to say that at the time this company so amended article 4, section 3, (to which sections 1 and 4 of articles 7 were made to conform) its directors had no thought that it had any retroactive effect. The language is: "Policies may be issued upon a basis of benefits ranging in amounts from $5,000.00 and all money paid in assessments upon the policy for the first five years"—

that is future policies may be so issued. As already laid down in this opinion, all statutes and constitutional provisions are presumed to be prospective in their operation, unless the contrary appears upon their face. It may be conceded that it was perfectly competent for the board of directors to make such amendments to affect all after-issued policies; and all subsequent members would take subject thereto, and would be amenable to the method thus established of assessments to pay for losses. The argument of counsel that
67 this condition of affairs would have the effect to increase the amount of assessments on anterior policy-holders, and might in practice produce other complications, such as adding to the work of accounting clerks in making monthly estimates, of the liabilities and the like, is but the argument *inconvenienti*. No difficulty arises in this case about paying the sum of assessments paid in by the assured, because there is no claim that there is not sufficient money in the death fund to pay the maximum loss in full. The assured has the right to say to this company: "I have not asked you to lessen the burden of my assessments; and perhaps it would not concern you so much but for the fact that the amount under my contract which would be paid my family is far greater than the small diminution of my assessments." While the result of the intricate sum worked out on paper by the company's experts may prove advantageous to the company, and possibly to future policy-holders, it ought not to be done at the expense of the anterior policy-holder.

It is among the recognized canons of the rules of construction that when operation and effect can be given to each and every part of a contract or statute, without giving to one provision a construction which subverts or qualifies another material provision, that which preserves the harmony and force of all should be preferred. There were many provisions of the rules and constitution of the company in force at the time of issuing the policy upon which the stipulation respecting amendments could properly operate, justifying a judgment that the reasonable application of the stipulation should be referred to such matters, without impairing the express obligation of the company to pay a specified sum, readily ascertainable. The natural and more reasonable idea of such a recitation as the one in question in the application for membership would convey to the mind of the applicant would be only that he was consenting in advance to such changes in the regulations and constitution of the company as in the judgment of the board of directors might seem to be conducive to the more efficient conduct and administration of the business; pertaining to method, discipline, restriction on travel and the acts of the assured, or the amount of annual dues or assessments, as well as the employment and investment of the death fund and other like matters. But it is inconceivable that either party could have intended that the construction might be placed upon the application that the applicant was consenting in advance that the promise expressed on the face of the policy to pay his family or heirs could be changed, either at the pleasure of the directors or

upon some ground of expediency resting in the mind of some future board of directors, or even that of a court or jury. In short, that he was consenting that the very essence of and inducement to the contract on his part depended upon other basis than that of the
68 express promise written in the policy. It seems to me, with all due deference, that to give such construction to this policy would make it but a snare and a delusion to entrap the unwary. It took four years after issuing this policy for the managing officers of the company to bring themselves to the attempt to cut down the value of this policy to the extent of limiting the amount of assessments to be returned, to the period of five years; and then, after waiting nine years more, during which time the assured was promptly paying his dues and assessments, they ventured upon the further experiment of attempting by one stroke of the pen to expunge entirely the provision for returning any assessments whatever. Such a construction of the contract cannot receive the assent of this court. The court, therefore, finds this issue for the plaintiff; and directs a judgment for the plaintiff in the sum of $5,811.83 with interest thereon from November 28, 1898, at the rate of six per cent. per annum.

The plaintiff demands further judgment of ten per cent. damages on the amount awarded. This demand is based upon section 5927 of the Revised Statutes of Missouri of 1889, which authorizes the court to allow the plaintiff damages not exceeding ten per cent. on the amount of the loss "if it appear from the evidence that such company has vexatiously refused to pay such loss." In view of the fact that the provision of the act of 1887 and the amendments to the constitution of this company made in 1889 and 1896, have not heretofore been construed by any court in this jurisdiction, and the court being of opinion that the defendant and its counsel are sincere in their contention this claim for damages is disallowed.

UNITED STATES OF AMERICA, *set:*

I, Adelaide Utter, clerk of the circuit court of the United States, for the western division of the western district of Missouri do hereby certify that the above and foregoing is a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case entitled Rosa B. Jarman, plaintiff, *vs.* Knights Templars & Masons' Life Indemnity Company, defendant, as fully as the same appears on file and of record in my office.

Seal United States Circuit Court for the Western District of Missouri, Western Division.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 9th day of September, A. D. 1899.

ADELAIDE UTTER, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Oct. 20, 1899.

JOHN D. JORDAN, *Clerk.*

69 By direction of Mr. Hervey B. Hicks, counsel for plaintiff in error, the following portions of the certified transcript of record from the circuit court of the United States for the western district of Missouri, which were omitted from the printed record by stipulation of the parties, are now included in the transcript of record from the United States circuit court of appeals to the Supreme Court of the United States, said portions so omitted from the printed record and now included in this transcript being the transcript of record from the circuit court of Grundy county, Missouri, and the stipulation as to time for pleading, etc., filed in said circuit court of the United States, viz:

UNITED STATES OF AMERICA, *set:*

Be it remembered that heretofore, to wit, on the 20th day of April, A. D. 1899, there was filed in the office of the clerk of the circuit court of the United States, for the western division of the western district of Missouri, a transcript of record from the circuit court of Grundy county, Missouri, in a case wherein Rosa B. Jarman is plaintiff and Knights Templars & Masons' Life Indemnity Company is defendant.

Said transcript is in words and figures as follows, to wit:

STATE OF MISSOURI, }
County of Grundy, } *ss:*

Pleas and proceedings before the circuit court of Grundy county, at a term begun and held in the city of Trenton, county and State aforesaid, on the 20th day of February, 1899, before the Honorable Paris C. Stepp, judge of the third judicial circuit of the State of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Be it remembered that heretofore, to wit, on the 19th day of January, 1899, a petition was filed in the above-entitled cause in the office of the circuit clerk of the circuit court in and for the county of Grundy, in words and figures as follows, to wit:

In the Circuit Court of Grundy County, Missouri, February Term, A. D. 1899.

70 ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHTS TEMPLARS — MASONS' LIFE INSURANCE COMPANY, Defendant.

Plaintiff states that on and prior to the 24th day of October, 1885, the defendant was duly organized and incorporated under the laws of the State of Illinois, and at said time, and before, and in fact at

all the dates and times herein mentioned, was engaged in carrying on its business of life insurance in the States of Illinois and Missouri.

And that on the 21st day of October, 1885, in consideration of twelve dollars and certain agreements and stipulations expressed in the policy hereinafter specifically mentioned and referred to, John P. Jarman husband of this plaintiff, was admitted to membership in defendant company for the term of life that at said time, at Trenton, Missouri, a certain policy of insurance hereto attached and made a part hereof, was by defendant issued and delivered at said time and place to the said John P. Jarman, husband of this plaintiff, — was admitted to membership in defendant company for the term of life, that at said time at Trenton, Missouri, a certain policy of insurance hereto attached and made a part hereof, was by defendant issued and delivered at said time and place to the said John P. Jarman.

That among other things it is provided by said policy: "In consideration of twelve dollars and the agreement and stipulations hereinafter expressed, John P. Jarman, druggist at Trenton, Missouri, is admitted to the membership in the Knights Templars and Masons' Life Indemnity Company for the term of life from the 24th day of October, 1885, at twelve o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member, in pursuance of the constitution and by-laws of said company, at the time and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice, and satisfactory proof of the death of said member is furnished to said company, to Rosa B. Jarman, wife, unless otherwise ordered by the member in his application, or if he chooses subsequently by or otherwise, in which case the company shall be notified by the member in writing and a receipt of such notification be duly acknowledged by the company, the sum
71 of five thousand dollars, and all the money paid on the policy in assessments subject to limitation as to the amount of such payment as is provided in section 1 of article 7 of the constitution on the back of this policy."

Plaintiff says that section 1 of article 7 so referred to upon the back of said policy is as follows:

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty days, pay the widow, children or heirs of the deceased member, (in the order named, unless otherwise ordered by the member during his lifetime or in his will) the amount set forth in the deceased member's policy of membership.

Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

Plaintiff says that her deceased husband, John P. Jarman, kept and performed all the conditions and requirements of said contract of insurance on his part; paid all dues and assessments made upon him as such member and holder of said policy at the times and in the manner required of him. That in his application for said insurance and membership in defendant company, upon which said policy was issued, her deceased husband requested said sum so agreed to be paid on his death to be paid to this plaintiff, then his wife; that he never thereafter by will or otherwise designated any other person to whom the same should be paid; that her said husband, during his lifetime, paid on said policy in assessments, the sum of sixteen hundred dollars. That he departed this life at Trenton, Grundy county, Missouri, on the 12th day of September, 1898, that thereafter, on the 18th day of September, 1898, plaintiff made and gave to defendant due proof of the death of her said husband; that in fact, plaintiff has, as did her said husband, kept and performed all the conditions and requirements of said policy and contract.

72 But plaintiff avers that defendant has and does wrongfully and vexatiously refuse to keep and perform the conditions of said policy and contract; that notwithstanding there is now and has ever been since the death of plaintiff's said husband, in the death fund, (mentioned in said section 1 of article 4 heretofore set out) arising from one assessment more than sufficient to pay plaintiff the said sum of five thousand dollars, as well as the sixteen hundred dollars assessment paid by the said John P. Jarman in his life upon said policy as aforesaid, and all interest, damages and penalties incurred, and due thereon, defendant has and now does wrongfully and vexatiously refuse to pay same.

Plaintiff says that by reason of the premises aforesaid, she is entitled to recover of the defendant the sum of five thousand dollars, together with the amounts paid by her deceased husband in assessments on said policy, sixteen hundred dollars, she is, (the defendant having so wrongfully and vexatiously refused to pay the same), under and by virtue of the provision of section 5927 Revised Statutes of the State of Missouri, for 1889, entitled to recover of defendant, as damages, ten per cent. on said sum, or the sum, as damages, of six hundred and sixty dollars; that upon said sum of six thousand and sixty dollars plaintiff alleges the facts to be, that she is entitled to recover six per cent. interest since the 18th day of November, 1898, proof of the death of her husband having been made on said 18th day of September, as aforesaid.

Wherefore plaintiff prays judgment for the sum of seventy-two hundred and sixty dollars ($7,260) with six per cent. interest on sixty hundred dollars thereof, since the 18th day of November, 1898 and for all other and further order, judgments and decrees as may be just and proper, and for costs.

HARBER & KNIGHT,
Attorneys for Plaintiff.

Whereupon a summons was issued to the sheriff of Cole county, on the 19th day of January, 1899, which was returned executed on the 20th day of January, 1899 as follows:

Sheriff's Return.

STATE OF MISSOURI, }
County of Cole, } *ss:*

I hereby certify that I executed the within writ in the county of Cole, State aforesaid, upon the within-named defendant,
73 The Knights Templars and Masons' Life Indemnity Company, on the 20th day of January, 1899, by delivering a true copy of the writ, together with the petition attached to said writ, to Edward T. O'Rear superintendent of the insurance department of the State of Missouri, he being the person authorized by law to acknowledge and receive and upon whom to serve process issuing out of the courts in the State of Missouri for and in behalf of said defendant, under and by virtue of section 5912 of the Revised Statutes of the State of Missouri.

In witness whereof, I have hereunto set my hand as sheriff aforesaid this 20th day of January, 1899.

J. J. HENDERSON,
Sheriff of Cole County, Missouri.

$5,000. No. 861.

The Knights Templars and Masons' Life Indemnity Company.

In consideration of twelve dollars and the agreements and stipulations hereinafter expressed, John P. Jarman druggist of Trenton, Missouri, is admitted to membership in the Knights Templars and Masons' Life Indemnity Company, for the term of life, from the twenty-fourth day of October, 1885, at 12 o'clock noon, and in further consideration that the said John P. Jarman shall pay all dues and assessments made upon him as such member in pursuance of the constitution and by-laws of said company, at the times and in the manner required of him, the said company will pay, at their principal office, within sixty days after notice and satisfactory proof of the death of said member is furnished said company, to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named, (unless otherwise ordered by the member in his application, or if he chooses, subsequently by will or otherwise; in which case the company shall be notified by the member in writing and the receipt of such notification be duly acknowledged by the company—see section 6 of article 7 on the back of this policy), the sum of five thousand dollars, and all the money paid on the policy in assessments, subject to the limitation as to the amount of such payment as is provided in section one (1), of article seven (7), of the constitution on the back of this policy. At the end of each ten (10) years' continuous membership, the said John P. Jarman shall receive
74 a bond bearing three (3) per cent. annual interest payable with the bond, for his entire proportion of the surplus, as per article seven (7) section two (2) which bond is available at any time, without notice, in payment of assessments as set forth in article seven (7), section three (3) of the constitution on the back of this policy.

This policy is issued and the said John P. Jarman is admitted to the membership in this company, and this policy is accepted by said member upon the following agreements and stipulations which are made a part of this contract.

1st. The application on which this policy is issued is made a part of this policy, by reference thereto, and the answers to questions and statements therein shall be a warranty of the truth of such answer and statements and if this policy has been obtained by or through any fraud, misrepresentations or concealment, or by any false statement, then this policy shall be absolutely null and void, and this company may cancel the same, which shall work a forfeiture of all rights under this contract.

2nd. Any failure to pay assessments as provided in conditions printed on the back of this policy, shall forfeit the membership in this company of the holder of this policy, and all benefits arising therefrom; but may be subsequently restored upon such terms as the directors of the company may fix.

3rd. The holder of this policy shall be bound by the post-office address given in the application until the company shall receive notice and acknowledge the same, of a change of such address, and then such post-office address shall bind such member until this company shall receive notice of, and acknowledge, a different post-office address.

4th. That if the holder of this policy shall impair his health, during the time of his membership in this company, by the habitual use of intoxicating drinks, or of opium, upon proof of such fact being made to the satisfaction of the board of directors of this company, such member shall forfeit all claims upon this company and shall be dropped from the roll of its members.

5th. The holder of this policy during the continuance of his membership in this company, is freely permitted to reside in any settled portion of the western hemisphere lying north of the thirty-second parallel of north latitude, at all seasons of the year; and in the
75 United States lying south of said thirty-second parallel, excepting from the first day of July until the first day of November in each year, and in the eastern hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich at all seasons of the year; and in Italy south of forty-second parallel excepting from the first day of July to the first day of November of each year; and he may also pass as a passenger by the usual routes of public conveyance to and from any port or place within the foregoing limits; but if he shall at any time during continuance of his membership in this company, pass beyond or be without the foregoing limits, or shall be personally engaged in blasting, mining or submarine operations, or in the manufacture or transportations of explosive substances, or as an employé in any capacity on any sea, lake or river, or any other body of water, or upon any railroad train; or if he shall enter into military service, whether voluntarily or otherwise, (the militia when not in actual service alone excepted) without the consent of this company previously given in writing, signed by the

president or one of its vice-presidents or if his death shall result from injuries received while under the influence of alcoholic liquors; or in any case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, State or province, or from any aerial voyage or trip; then and each of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member shall have no claims for benefits on this company.

Provided that in the case of the suicide of the holder of this policy, then this company will pay to his widow and his heirs or devisees such an amount on this policy as the member shall have paid to this company on this policy in assessments on the same without interest.

6th. To avoid lawsuits, and yet insure the ends of justice, it is expressly stipulated and agreed that all disputes arising between this company and the claimant or claimants of benefits inuring under this policy, shall be settled by arbitration, and in the manner provided by article 8, section 2 of the constitution of this company, as the same appears printed on the back of this policy.

7th. It is further agreed by the holder hereof that, unless
76 claim is made for benefits under this policy by the widow, heirs, devisee or devisees of the said member within six months after the death of said member, then, — for benefits under this policy shall be forfeited, and this company shall be released from all liability for such benefits.

8th. That the constitution or by-laws printed on the back of this policy shall separately and collectively form a part of this contract.

In witness whereof, the said Knights Templars and Masons' Life Insurance Company has caused these presents to be signed by its president, countersigned by its general manager, and affixed its seal in the city of Chicago, State of Illinois, this 24th day of October, 1885.

J. ADAMS ALLEN, *President.*

Countersigned by
W. H. GRAY,
General Manager.

Constitution of the Knights Templars and Masons' Life Indemnity Co.

ARTICLE 1.

Name and Object.

SECTION 1. This company shall be known as the Knights Templars & Masons' Life Indemnity Company.

SECTION 2. The object of this company shall be to furnish life indemnity or pecuniary benefits to the widows, orphans, heirs, relatives, devisees or legatees of deceased members, according to the regulations and provisions hereinafter specified.

SECTION 3. The principal office of the company shall be at Chicago, Illinois, but the board may establish branch offices elsewhere.

ARTICLE 2.

Officers and Directors.

SECTION 1. The officers of this company shall be a president, vice-president, second vice-president, and medical director, to be chosen annually by the board of directors.

SECTION 2. The affairs of the corporation shall be managed by not less than five nor more than nine directors, who shall be elected from and by the members provided that, as near as practicable, an equal number shall be elected each year for a period not to exceed three years. Vacancies occurring in the board shall be filled by the majority vote of all the directors.

SECTION 3. At the election for directors, and on all questions coming properly before the company, every member shall have the right to one vote, either in person or by proxy, for every full one thousand dollars mentioned in his policy at the time of its
77 issue.

ARTICLE 3.

Duties and Powers of Directors.

SECTION 1. It shall be the duty of the board of directors to hold in trust the property and assets of this company in accordance with the provisions of this constitution and the by-laws adopted in pursuance thereof.

SECTION 2. The board of directors shall have power to employ any agent, agents, or other service, for such time and on such terms and with such powers, as in their judgment will best promote and conserve the interests of the company.

SECTION 3. They shall have power to remove and officer for inefficiency or malfeasance, in office at any regular meeting of the board of directors, two-thirds of all the directors voting for such removal, provided the accused shall have thirty days' previous notice of the charges and specifications and shall have the right of self-defense before the board of directors, in person or by counsel. But before the trial of such charges, a majority of all the board of directors may suspend an officer from his office until such trial can be had.

SECTION 4. The board of directors shall select a suitable depository for the funds of the company, which shall be considered safe by the general public. All moneys deposited therein shall be withdrawn only on the check of the president of the company and countersigned by at least one other director. In case of the absence or inability of the president to act, the first or second vice-president may act in his stead.

SECTION 5. The board of directors shall have full charge of all matters not herein provided for, and shall fix the time of the annual meeting of the company.

ARTICLE 4.

SECTION 1. When an applicant has complied with the constitution and by-laws and been accepted, the board of directors shall make over to him through officers of the company a policy of membership, stating the terms and conditions of the contract between the parties, which policy shall be sufficient evidence of his membership at the time it was issued and shall constitute the basis of settlement with the beneficiaries; but no person shall be entitled to the benefits of this company until such certificate is issued and delivered.

78 SECTION 2. Post-office address.—It shall be the duty of all the members to keep the company fully advised of any change of residence or post-office address always giving full address.

SECTION 3. Policies of membership may be issued upon a basis of benefits ranging in amounts to five thousand dollars and all money paid in assessments upon the policy, but no member shall hold more than one policy at the same time. Any holder of a policy may change the amount of his benefit, from a lower to a higher amount by the surrender of his policy furnishing a satisfactory certificate of good health from a medical examiner of the company, subject to the approval of the medical director and paying the sum of five dollars and may change from a higher to a lower amount by paying two dollars and surrendering the original policy.

SECTION 4. Upon the death of any member an assessment increasing with age, shall be made upon the surviving members, provided an assessment is needed, according to the following table of rates: Said table is drawn for $1,000 which shall be the unit in determining all other amounts:

Table of Rates—Assessments per $1,000.

Years of age, inclusive,			21 to 30	$0.50
"	"	"	31 to 35	.60
"	"	"	36 to 40	.65
"	"	"	41 to 45	.80
"	"	"	46 to 50	.95
Years of age, inclusive,			51 to 55	$1.20
"	"	"	56 to 60	1.50
"	"	"	61 to 65	2.00
"	"	"	66 and upwards	2.55

But no assessment shall be made so long as the money in the death fund will pay the maximum loss in full.

SECTION 5. There shall be an annual due of one dollar per thousand dollars on the face of the policy, payable on or within ten days after each anniversary of the policy, and a failure to pay said due shall work a forfeiture of the policy of the same as an unpaid assessment.

ARTICLE 5.

SECTION 1. Seventy-five per cent. of all the moneys arising or accruing from assessments shall be placed to the credit of the death fund, which fund shall be used for no other purpose than the payment of death losses.

SECTION 2. All other moneys shall be placed in a contin-
79 gent fund out of which the expenses and emergencies are to be met, and all the remainder or surplus shall be invested in some reliable trust for the payment of the bonds as herein provided.

ARTICLE 6.

Assessments.

SECTION 1. Upon the notice and satisfactory proof of a death of a member, (should it be necessary to make an assessment) the company, or such person as the board may direct, shall send by mail, to the last recorded post-office address of every member, a notice containing the name and residence of the deceased member and the amount due from the member to whom the notice is sent. The party sending such notice may employ a suitable person, persons or corporation in any town or city, who may act in serving such notices either personally or by mail. A notice so sent or served shall be deemed and taken to be a lawful and sufficient notice for the payment of the assessment required.

SECTION 2. Should any one fail to forward, as indicated in the notice, the amount thus due, for a period of ten (10) days after the date of said notice, he shall forfeit his membership and all benefits arising therefrom. Any one having thus forfeited his membership may be reinstated, he being alive, within thirty (30) days after the date of said notice, by the payment of all arrearages and may be reinstated to membership subsequent to the thirty (30) days upon such terms as the board of directors may fix.

SECTION 3. Any member may make a deposit in advance for the payment of his assessments which money shall be used for no other purpose by the company and in case of the member's death before it is so needed the unused balance shall be paid back with the policy.

ARTICLE 7.

Benefits.

SECTION 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children or heirs of the deceased member, (and in the order named unless otherwise ordered by the member during his lifetime or in his will,) the amount set forth in the deceased member's policy of membership: Provided that a policy of membership for $5,000 shall be good for all money in the death fund arising from one assessment; provided it shall not exceed
80 $5,000 and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the

money in the death fund arising from one assessment provided it shall not exceed $1,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.

SECTION 2. At the end of each ten years' continuous membership, such member shall receive a bond bearing 3 % annual interest for such a proportion of the surplus on the first day of the month nearest preceding, as all the money paid during the ten years by him on his existing policy bears to the entire amount of money received by the company during the same period.

SECTION 3. Any such bond can be used as par, and accrued interest at any time, without notice in payment of assessments, and no bond shall run longer than the life of the member; but if unused, shall be payable with his policy at death.

SECTION 4. At the end of each five years' continuous membership, the company will, on the return of the policy, to the home office and the payment of twenty-five cents, endorse on it the amount of assessment paid; which amount is payable at death on the same conditions as the policy itself.

SECTION 5. Any member desiring to withdraw, shall be furnished under the seal of the company, an honorable withdrawal card, upon payment of all dues and assessments legally charged to him, and the surrender of his policy with all interest therein.

SECTION 6. Any member having designated his beneficiary or beneficiaries may change the same at his pleasure, without notice to or consent of the beneficiary or beneficiaries and all accepting any interest in this policy or company do so upon these express terms.

ARTICLE 8.

SECTION 1. Any member who shall impair his health by the habitual use of intoxicating drinks, or opium, shall upon proof of the fact to the satisfaction of the board of directors forfeit all claim upon the company and be dropped from the roll of its members.

SECTION 2. To avoid lawsuits, and yet insure the end of justice, it is expressly stipulated that all disputes arising between the company and its members shall be settled by arbitration, and in the manner following, to wit: The company shall select one man, the aggrieved claimant one man, or in case either party shall neglect or refuse to appoint an arbitrator for a period of thirty days after due notice that an arbitration is desired, then in that case the party desiring to arbitrate having selected an arbitrator, may apply to any judge of any court of record in the United States, who shall have power to appoint the necessary referee, and the two thus appointed shall select the third party who shall constitute an authoritative commission to hear and determine the case, and their decision shall be binding and final in all cases, and such decision may be entered as a judgment in any court of record in the county where the home office is located.

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SECTION 3. This constitution may be amended at any regular meeting of this company by three-fourths of those voting:

Provided, that all proposed amendments shall be first submitted in writing to the board of directors, at a regular meeting and if five

(5) directors approve the said amendments then the board shall require a notice of the proposed change to be given to all the members of the said company at least thirty (30) days before the time of said meeting. Every member shall have the right to vote upon proposed amendments, on the condition and in the manner prescribed for the election of members of the board of directors.

SECTION 4. The board of directors shall have power to make by-laws and regulations for the conduct of the business of this company, not inconsistent with the provisions of this constitution.

And afterwards, to wit, on the 20th day of February, 1899, the same being the first day of the regular February term, 1899 of this court, the following further proceedings were had in said cause, to wit:

ROSA B. JARMAN, Plaintiff,
vs.
THE KNIGHT TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Defendant files petition and bond for removal which is in words and figures as follows, to wit:

In the Circuit Court of Grundy County, Missouri, February Term, A. D. 1899.

ROSA B. JARMAN, Plaintiff,
vs.
82 KNIGHTS TEMPLARS & MASONS' LIFE INDEMNITY COMPANY of Chicago, Illinois, a Corporation, Defendant.

To the Honorable Paris C. Stepp, judge of said court:

Now comes the defendant herein by its attorney, Hervey B. Hicks, and respectfully presents to the said court this petition for the removal of the above-entitled cause from the said circuit court of Grundy county, Missouri, to the United States circuit court for the western division of the western district of Missouri under the act of Congress touching the matter of such removals and for the grounds of removal respectfully states:

1. That the amount in dispute, exclusive of interest and costs, in the above-entitled suit, commenced in the said circuit court of Grundy county, Missouri, exceeded the sum of $2,000, and is to wit, more than $5,000.

2. That the said suit is brought by Rosa B. Jarman a citizen of the State of Missouri, and against The Knights Templars — Masons' Life Indemnity Company, a corporation organized and existing and doing business — and by virtue of the laws of the State of Illinois, and that said corporation is a citizen of the State of Illinois and is a non-resident of the State of Missouri.

3. Your petitioner presents herewith a bond in the sum of five hundred dollars ($500) with good and sufficient surety conditioned as provided in the act of Congress, approved August 13th, 1888,

governing the removal of suits of a civil nature from State courts to circuit courts of the United States.

Wherefore your petitioner prays that your honor will accept this petition and the bond aforesaid for the removal of said cause to the circuit court of the United States for the district court wherein this suit is pending, and that an order may be entered that the said — shall be removed to said circuit court of the United States in said district for trial therein at the next session of said circuit court to be held after the said removal and that no further proceedings shall be had in said cause in the said circuit court of Grundy county; and your petitioner will never pray, etc.

HERVEY B. HICKS,
Attorney for Defendant.

STATE OF ILLINOIS, }
County of Cook, } ss:

On the 18th day of February, 1899, personally appeared
83 before me the above-named Hervey B. Hicks, who being duly sworn deposes and says that he has read the foregoing petition by him subscribed, and knows the contents thereof, and makes this affidavit on behalf of the defendant, The Knights Templars & Masons' Life Indemnity Company, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief — as to those matters he believes it to be true.

[SEAL.] A. N. HISLOP,
Notary Public.

Know all men by these presents that the Knight Templars and Masons' Life Indemnity Company of Chicago, Illinois, by Hervey B. Hicks, its attorney-in-fact, and William H. Gray and —— —— are held and firmly bound unto Rosa B. Jarman in the sum of five hundred dollars (500) good and lawful money of the United States, to be paid to the said Rosa B. Jarman or to her attorney, executors, administrators or assigns, for which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 18th day of February, 1899.

The conditions of the above obligation is such that whereas the said Knight Templars and Masons' Life Indemnity Company the defendant in an action begun in the circuit court of Grundy county, Missouri, at the February, A. D. 1899, term, of said court now pending, entitled Rosa B. Jarman plaintiff, *vs.* The Knight Templars and Masons' Life Indemnity Company, has filed a petition in the said circuit court of Grundy county, Missouri, for the removal of said cause to the United States circuit court for the western division of the western district of Missouri;

Now, therefore, if the said defendant, The Knight Templars and Masons' Life Indemnity Company, enters in said circuit court, of the United States, on or before the first day of the next term thereof, a copy of the record in the above-entitled suit and pays all costs that may be awarded by said circuit court of the United States against it if said court shall hold that such suit was wrongfully or

improperly removed thereto, and shall appear and enter special bail in such suit if such special bail was originally requisite therein,
84 then this obligation to be void; otherwise to remain in full force and effect.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY.
[SEAL.] By HERVEY B. HICKS, *Its Attorney-in-fact.*
WILLIAM H. GRAY.

Sealed and delivered in the presence of
A. N. HISLOP.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHT TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Defendant.

Defendant's petition and bond for removal taken up by the court and seen and heard and bond approved and prayer of petitioner granted, it is therefore ordered and adjudged by the court that the State court proceed no further herein but that this cause be and the same is hereby removed to the United States circuit — of the western division of the western district of the State of Missouri, and that defendant herein cause a transcript of the proceedings herein to be filed without delay in said United States court.

STATE OF MISSOURI, } ss:
County of Grundy, }

I, A. U. Spickard, clerk of the circuit court in and for said county, hereby certify the above and foregoing to be a full, true and complete transcript of all the proceedings had in our said court, in the above-entitled cause, as fully as the same appears on file and of record in my said office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Trenton, in said county, this first day of March, 1899.

[SEAL.] A. U. SPICKARD,
Clerk of the Circuit Court.

Thereafter, to wit, on the 21st day of April, A. D. 1899, a stipulation was filed in the above-entitled cause.

Said stipulation is in words and figures as follows, to wit:

85 The Circuit Court of the United States, Western Division of the Western District of Missouri.

ROSA B. JARMAN, Plaintiff,
vs.
KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY OF Illinois, a Corporation, Defendant.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that all pleadings which would be otherwise re-

quired herein are hereby waived until such time as an agreed statement of facts between the parties shall be settled and filed, or in case of a disagreement about the statement of facts, the defendant shall have the usual time for answer after notice from the plaintiff that it will be impossible to agree upon a statement of facts.

HARBER & KNIGHT,
Attorneys for Plaintiff.
HERVEY B. HICKS,
Attorney for Defendant.

* * * * * * *

86 (*Appearance for Plaintiff in Error.*)

And on the twentieth day of October, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY of Illinois, a Corporation, Defendant, Plaintiff in Error,
vs.
ROSA B. JARMAN, Plaintiff, Defendant in Error.

The clerk will enter my appearance as counsel for plaintiff in error.

Dated October 18th, 1899.

HERVEY B. HICKS,
1306 *Masonic Temple, Chicago, Ill.*

(Endorsed:) No. 1347. United States circuit court of appeals for the eighth circuit. Knights Templars and Masons' Life Indemnity Co., pl'ff in error, *vs.* Rosa B. Jarman, def't in error. Appearance. Filed Oct. 20, 1899. John D. Jordan, clerk. Hervey B. Hicks, 1306 Masonic temple, Chgo., att'y for pl'ff in error.

(*Appearance for Plaintiff in Error.*)

And on the thirtieth day of March, A. D. 1900, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Plaintiff in Error, *vs.* ROSA B. JARMAN. } No. 1347.

87 The clerk will enter my appearance as counsel for the plaintiff in error.

SAMUEL P. HUSTON,
By H. B. H.

(Endorsed.) U. S. circuit court of appeals, eighth circuit. December term, 1899. No. 1347. Knights Templars & Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman. Appearance. Filed Mar. 30, 1900. John D. Jordan, clerk. Samuel P. Huston, St. Joseph, Mo., counsel for pl'ff in error.

(*Appearance for Defendant in Error.*)

And on the twenty-first day of November, A. D. 1899, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error, *vs.* ROSA B. JARMAN. } No. 1347.

The clerk will enter *my* appearance as counsel for the defendant in error.

E. M. HARBER.
A. G. KNIGHT.

HON. F. H. BACON, *Of Counsel.*

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1347. Knights Templars and Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman. Appearance. Filed Nov. 21, 1899. John D. Jordan, clerk. F. H. Bacon, E. M. Harber, A. G. Knight, counsel for def'd't in error.

(*Argument Commenced.*)

And on the tenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to wit:

88 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

THURSDAY, *May* 10, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Hervey B. Hicks for plaintiff in error, and the hour of adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the eleventh day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

FRIDAY, *May* 11, 1900.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause having been called for further hearing argument was continued by Mr. Hervey B. Hicks for plaintiff in error, by Mr. F. H. Bacon for defendant in error and concluded by Mr. Hervey B. Hicks for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

89 (*Opinion.*)

And on the fifteenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed, in said cause, in the words and figures following, to wit:

90 United States Circuit Court of Appeals, Eighth Circuit. May Term, A. D. 1900.

THE KNIGHTS TEMPLARS AND MASONS' Life Indemnity Company, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error.

No. 1347. In Error to the Circuit Court of the United States for the Western District of Missouri.

Mr. H. B. Hicks and Mr. Samuel P. Huston for the plaintiff in error.

Mr. F. H. Bacon (Mr. E. M. Harber and Mr. A. G. Knight were with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

THAYER, circuit judge, delivered the opinion of the court.

This action is founded on a certificate of membership issued by the Knights Templars and Masons' Life Indemnity Company, the plaintiff in error, to John P. Jarman, by the terms of which a certain sum of money hereafter mentioned was payable to Rosa B. Jarman, the wife of John P. Jarman, on the death of the latter. The plaintiff in error will be hereafter designated as the defendant or the defendant company. The certificate was issued and delivered on October 25, 1885. When it was issued the constitution or by-laws of the defendant company, which were endorsed on the back of the certificate, provided "that a policy of membership for $5,000 shall be good for all money in the death fund arising from one assessment; provided it shall not exceed $5,000, and all the money paid on the policy in assessments" and Jarman's certificate declared on its face that the defendant company would pay "to Rosa B. Jarman, wife, the children or heirs of said member, and in the order named * * * the sum of five thousand dollars, and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in section one (1) of article seven (7) of the constitution on the back of this policy." By an amendment to the constitution or by-laws which was adopted on January 8, 1889, the
91 company limited its liability to refund all assessments that might have been paid to such as were paid "for the first five years" of membership; and by later amendments which were made respectively on February 20, 1894, and January 14, 1896, it exempted itself from liability to refund any assessments or to pay any greater sum than the principal sum specified on the face of its certificates. The certificate of membership, when issued, contained a provision that the policy should become null and void "in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane," and it was stipulated that John P. Jarman, the deceased member, committed suicide on September 12, 1898, "while insane to such an extent as to be incapable of understanding the nature or consequences of his act, * * * by a gunshot wound inflicted by himself." When sued upon its policy

the defendant company interposed two defenses. First, it asserted that it was not liable on its policy for any amount because Jarman took his own life; second, it contended that even if it was liable for the face of its policy, to wit, for the sum of $5,000, it was not liable for the amount of assessments which the deceased member had paid, and which it had originally agreed to refund, because of the aforesaid amendments made to its constitution on February 20, 1894, and January 14, 1896. Both of these contentions were overruled by the trial court, 95 Fed. Rep. 70, and the case is now before this court for review.

In the case of Knights Templars and Masons' Life Indemnity Company *v.* Berry, 4 U. S. App. 353, 50 Fed. Rep. 511, it was held by this court, affirming the decision of Judge Caldwell on the circuit (Berry *et al. v.* Knights Templars' and Masons' Life Indemnity Company, 46 Fed. Rep. 439), that a certificate or policy of insurance which was executed by the defendant company and delivered in the State of Missouri to a citizen of that State prior to 1887, and was in the same form substantially as the policy now under consideration, was a Missouri contract and a policy of insurance, and that being such it was subject to the provisions of section 5855 of the Revised Statutes of Missouri 1889, which declares, in substance, that in suits on policies of insurance on life, issued by any company doing business in the State of Missouri, it shall be no defense that the insured committed suicide unless it is shown to the satisfaction of the court or jury trying the case that the insured contemplated committing suicide at the time he made his application for the policy, and that any stipulation in a life-insurance policy to the contrary shall be void. The correctness of that view is not challenged on the present occasion, and as the policy in suit was issued to a citizen of Missouri and delivered to him in that State and the initial assessment there paid, it follows that when the policy was delivered it covered the risk of suicide by virtue of the local statute. On March 30, 1887, nearly two years after the policy in suit was issued, the legislature of the State of Missouri enacted a law with reference to insurance companies doing business on the assessment plan, which now appears in the Revised Statutes of that State for the year 1889 as article 3 of chapter 89, being sections 5860 to 5872, both inclusive. This act placed foreign insurance companies doing business in the State on the assessment plan under the supervision of the insurance department of
92 the State, and one section thereof, being section 5869, subjected such foreign assessment companies to all the provisions of section 5912 of the Revised Statutes of Missouri for 1889, which was then in force, but concluded with the following proviso: "Provided, always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this State, except as distinctly herein set forth." Section 5912, to which reference was thus made, related wholly to the mode of obtaining service on foreign insurance companies doing business within the State of Missouri, and it is accordingly claimed that the operation of the proviso

was to relieve insurance companies doing business on the assessment plan, as distinguished from companies doing business in other ways, from the disability imposed by section 5855 to plead suicide as a defense, inasmuch as section 5855 forms a part of the general insurance laws of the State and was not incorporated into the act of March 30, 1887, relating to assessment companies.

It is by no means certain that the proviso in question was intended by the law-maker to exempt assessment companies from the operation of section 5855. The legislature did not see fit to repeal that section, but left it standing and in full force as a part of the statute law of the State, at least in so far as it affected ordinary life companies, and it is difficult to assign any reason for prohibiting companies of the latter kind from pleading the defense of suicide which does not apply with equal force to assessment companies. It has been held, however, in Haynie *v.* Knights Templars and Masons' Life Indemnity Company, 139 Mo. 416, that from the date of its adoption the proviso did exempt assessment companies from the operation of section 5855 and enable them to plead suicide as a defense to policies thereafter issued which by their terms excluded the risk of death by suicide. Accepting that as an interpretation of a local law by the highest court of the State which this court is required to adopt, we pass to the inquiry whether it was competent for the legislature by the proviso in the act of March 30, 1887, to relieve the defendant company from the operation of section 5855 as respects policies theretofore issued and then outstanding which were clearly subject to its provisions when they were issued.

In considering this question it must be borne in mind that section 5855 not only provides that in suits on life-insurance policies issued by companies doing business in the State of Missouri it shall be no defense that the insured committed suicide, but also declares that "any stipulation in the policy to the contrary shall be void." The effect of this statute upon the policy in controversy was to expunge the provision which is found therein in substance, that it should become null and void if Jarman took his own life either sane or insane. The contract by force of the statute took effect as it would have done if no such clause as that last referred to had been inserted, and embraced the risk of death by suicide as well as from other causes. Moreover, in legal contemplation the first and all subsequent premiums or assessments were paid by the insured in consideration of the assumption by the insurer of the risk of death by suicide, as well as from other causes, since the statute rendered
93 the agreement to the contrary utterly meaningless and nugatory. In this way the statute was worked into the contract and became a part of it and determined its meaning, scope and effect. In the light of the statute the parties must be presumed to have agreed that the insurer would assume the risk of death by suicide because the law would not permit them to agree otherwise. We are of opinion, therefore, that it was not within the power of the legislature to declare in 1887 with respect to the policy in suit and others of a like character that self-destruction might be pleaded as a defense, which was tanta-

mount to saying that the policy should not comprehend the risk of death by suicide, because a legislative enactment to that effect would impair the obligation evidenced by the policy, contrary to the mandate of the Federal and the State constitution. Constitution of Missouri, sec. 15, art. 2, R. S. of Mo., 1889, p. 59. In so holding we have not overlooked the decision in Ewell *v.* Daggs, 108 U. S. 142, upon which much reliance is placed by the defendant company, but we are of the opinion that the doctrine of that case is not applicable to the one at bar. In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment, and it was held in substance that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty. It also said, in substance, that the borrower in such case had no right to complain of the remission of the penalty, because it was not imposed for his benefit, but rather for the benefit of the public, and furthermore, that the usury statute conferred a privilege which belonged to the remedy and formed no element in the rights that inhered in the contract. This reasoning, we think, is entirely inapplicable to the case in hand because, as we have heretofore shown, the Missouri statute, section 5855, operated to enlarge the scope of the policy and make it comprehend risks that but for the statute would not have been within its provisions.

While on this branch of the case another point will be noticed briefly, simply because it is insisted upon in the argument that was made in behalf of the defendant company. It is said that by a long line of adjudications prior to the adoption of the Missouri statute excluding the defense of suicide, it had been determined that the words "committed suicide," as used in insurance policies, meant "a voluntary act when a person was in the possession of his ordinary reasoning faculties;" that the words "committed suicide" are used in that sense in section 5855, and being so used that the statute is not broad enough to cover the present case because it is stipulated that Jarman took his own life "while insane to such an extent as to be incapable of understanding the nature or consequences of his act." A proper degree of respect for the legislature requires us to overrule this contention, since it is not probable that any legislative body in its right mind would declare that insurance companies shall not be allowed to make the defense of suicide if the insured takes his life when in the full possession of all his reasoning faculties, but may make it whenever it is claimed that he took his life while insane. In view of the many long and embarrassing trials that had taken place in actions upon insurance policies to determine the mental state of the deceased at the time he took his own life and the difficulty in many cases of determining that issue with any approach to accuracy, it was deemed best to exclude the defense of suicide altogether in such actions. The statute was doubtless prompted by that view and whether it be regarded as wise or

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unwise, it was competent for the legislature to enact it and we have no doubt that the words "committed suicide" were used in a popular sense to comprehend the act of self-destruction without reference to the mental state of the actor.

We have next to determine whether the amendments to the defendant's constitution of date January 8, 1889, February 20, 1894, and January 14, 1896, whereby it expunged those provisions of its constitution which obligated it on the death of a member to refund "all money paid on the policy in assessments," have the effect of depriving the plaintiff of the right to recover the assessments paid on the policy in controversy and of limiting her right of recovery to the principal sum therein mentioned. The argument in favor of giving the amendments such effect as is last described is based wholly on the concluding paragraph of Jarman's application for the policy, which is as follows: "I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may be constitutionally changed hereafter." Conceding, in accordance with the stipulation of the parties, that the amendments in question were adopted legally in the manner prescribed by the defendant's constitution and by-laws, we observe in the first instance that there is nothing to indicate that the amendments were intended to have a retrospective operation and reduce the amount payable on certificates or policies like the one at bar, which was then outstanding, and in plain language obligated the company to refund all assessments that might be paid thereon. The present record contains no evidence which shows affirmatively that the amendments were intended to operate retrospectively and extinguish the obligation to refund assessments that had been expressly assumed, while the fact that outstanding policies were not recalled and the promise to refund assessments expunged or erased from the face of such policies, fairly indicates, we think, that the amendments were designed to operate prospectively on policies thereafter executed. Aside from this view of the case it is a well-established rule for the construction of statutes that they should be so interpreted as to give them a prospective operation only, unless it is manifest that they were intended to operate retrospectively, and no reason is perceived why the same rule of construction should not apply to the legislative acts of a private corporation. If it assumes to amend its constitution or by-laws and the amendment is in such form that if given a retrospective effect it will alter obligations which the company has assumed by existing contracts, it should be presumed, unless there are imperative reasons to the contrary, that it was not intended to have such effect but was only intended to prescribe a rule of action for the future. Carnes *v.* Iowa Travelling Men's Association, 76 N. W. Rep. (Ia.) 683, Wist *v.* Grand Lodge A. O. U. W., 22 Ore. 271; Endlich on Interpretation of Statutes, sec. 273; Sutherland on Statutory Construction, sec. 464.

In the second place we observe that it is not a reasonable interpretation of the clause above quoted from the application that
95 the applicant intended to assent in advance to any changes in its constitution and by-laws which the company saw fit to

make, even if they reduced the amount of indemnity which the company had promised to pay in the event of his death and thereby lessened the value of his policy. He was to occupy a dual relation to the company, first, as one of its members, and second, as any other individual having a contract with it. In the former relation he was willing to be bound by any lawful amendment to the company's constitution and by-laws that the members collectively saw fit to adopt which concerned the government of the corporation or the mode of transacting its business and did not impair any of the essential provisions of his contract. He probably foresaw that in course of time the company might find it expedient to make some changes in its method of corporate government or in the mode of transacting its business or in its rules of discipline, and he doubtless intended to assent to all amendments of the constitution and by-laws which were framed for that purpose and would not deprive him of any substantial right or benefit secured by his policy. It is not reasonable, however, to suppose that he intended to agree in advance that the company might at any time reduce the promised indemnity to any sum which it found it convenient to pay. The liberal indemnity that was promised by the policy as first drawn may have been, and probably was the inducing cause which led Jarman to become a member of the defendant company and it would be unreasonable to infer that he intended to agree that after he had paid assessments upon his policy for a period of years the consideration that had induced him to pay the same might be withdrawn in whole or in part without his consent. The record contains no evidence that the deceased member voted for any of the amendments now in question or was aware of their adoption during his lifetime. And even if it did appear that he voted for the amendments and was aware of their adoption, the presumption would be that he did so in the belief that the amendments operated prospectively and not retrospectively upon antecedent contracts. All contracts, notwithstanding the general words or phrases which they may contain, should receive an interpretation which will accord with the presumed intention of the contracting parties and will not work an injustice or lead to absurd consequences. United States *v.* Kirby, 7 Wall. 482; Church of the Holy Trinity *v.* United States, 143 U. S. 457, 461; Liverpool & London & Globe Ins. Co. *v.* Kearney, 36 C. C. A. 265, 94 Fed. Rep. 314. Applying that rule of interpretation we are unable to give to the clause found in Jarman's application a construction that would enable the defendant company by a simple amendment to its constitution or by-laws to repudiate a stipulation contained in the policy which in the estimation of the policyholder most likely gave to it its chief value.

The views which we have expressed are in accordance with the conclusion heretofore reached by several other courts, including the trial court, with respect to the same or kindred questions. Hale *v.* Equitable Aid Union, 168 Pa. St. 377; Wist *v.* Grand Lodge A. O. U. W., 22 Oregon, 271; Weiler *v.* Equitable Aid Union, 92 Hun. 277;

The Grand Lodge of the Ancient Order of United Workmen
96 *v.* Sater, 44 Mo. App. 445, 452, 453; Voight *v.* Kersten, 164 Ill. 314; Startling *v.* Supreme Council Royal Templars of Temperance, 108 Mich. 140; Smith *v.* Supreme Lodge of the Knights of Pythias, —— Mo. App. ——, (not yet reported) and cases there cited. The judgment below awarding the plaintiff the full amount of the indemnity promised by the policy is accordingly affirmed.

SANBORN, circuit judge, dissenting:

Section 5855 of the Revised Statutes of Missouri, 1889, provides that "in all suits upon policies of insurance on life hereafter issued by any company doing business in this State it shall be no defense that the insured committed suicide unless" a state of facts, not claimed to exist in this case, conditioned the making of the application for insurance. The parties to this suit have stipulated that the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his act took his own life" and that if section 5855 did "not operate against the defendant company as to this action, the defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman" except to the extent of the repayment of his assessments which amount to $811.83.

Section 5855 prohibited the defense that the insured committed suicide, but it left all other legal and equitable defenses unaffected. Is the defense that the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his act took his own life" a defense that he committed suicide? If it is, it is prohibited by the statute. If it is not, the statute does not operate upon it, and under the express stipulation of the parties the amount of the plaintiff's recovery should be limited to $811.83. The statutes of the State of Missouri provide that "words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases, having a peculiar and appropriate meaning in law, shall be understood according to their technical import." Revised Statutes of Missouri, 1889, § 6570. What is the plain, ordinary and usual meaning of the words "committed suicide?" Does suicide here include, or does it exclude, the taking by a person of his own life while he is so insane that he is incapable of understanding the nature or consequences of his act? The definition of the word suicide in Webster's Dictionary reads in this way: "Suicide. The act of designedly destroying one's own life committed by a person of years of discretion and sound mind."

In Worcester's Dictionary it is thus defined: "Suicide. The slayer or slaying of one's self; self-murder; a self-murderer," and the definition in the Century Dictionary is: "Suicide. The act of designedly destroying one's own life." The plain, ordinary and usual sense of a word or phrase cannot always be safely evolved from the inner consciousness of any one, and perhaps no better evidence of this meaning of the word "suicide" could be presented than the definitions of these standard and popular dictionaries. Not one of these definitions includes the act of one who is so insane that he is inca-

pable of understanding the nature or consequences of the thing
97 he is doing. In all of them the intent and design of the sound mind is an indispensable element. Under these interpretations a taking of one's life without the design of a sound mind is not suicide and one who is so insane that he does not understand the nature or consequences of his act cannot be said to designedly or intentionally do that act. The plain or ordinary sense of the words "committed suicide," therefore, does not include the taking of his life by one who is so insane that he does not understand the nature or consequences of his act.

Moreover, in the statute under consideration the words "committed suicide" were legal, technical terms used to describe and define the basis of a defense to an action at law and having an appropriate meaning in the law. It is a settled rule of construction that in interpreting the statutes of a State the Federal courts follow the rules of construction enacted by its legislature or announced by its courts, and if this rule is to be observed in the interpretation of section 5855 the words "committed suicide," in that section must be understood according to their legal, technical import. In the year 1872 the Supreme Court of the United States declared and the consensus of judicial opinion in England and America, while differing on other questions, always has been and is that "suicide" or "death by one's own hand" (and the two terms are declared by the Supreme Court to be interchangeable in Bigelow *v.* Berkshire Life Ins. Co. 93 U. S. 284, 286) does not include or describe the taking of his life by one who is insane to such an extent that he does not understand the nature or consequences of his act. Life Ins. Co. *v.* Terry, 82 U. S. 580, 591; Insurance Co. *v.* Rodel, 95 U. S. 232; Scheffer *v.* National Life Ins. Co., 25 Minn. 534, 537; Breasted *v.* Farmers' Loan & Trust Co., 4 Hill, 73; Newton *v.* Ins. Co., 76 N. Y. 426; Estabrook *v.* Union Mutual Life Ins. Co., 54 Me. 224; Phadenhauer *v.* Insurance Co., 7 Heiskell, 567; Insurance Co. *v.* Isett, 74 Pa. St. 176; Connecticut Mutual Life Ins. Co. *v.* Groom, 86 Pa. St. 92, 96; Merritt *v.* Ins. Co., 55 Ga. 103; Life Association of America *v.* Waller, 57 Ga. 533; Phillips *v.* Louisiana Equitable Life Ins. Co., 26 La. Ann. 404; Cook on Life Insurance, § 42.

Many other authorities to like effect might be cited and none have been found which hold that the taking of his life by one who is so insane that he is incapable of understanding the nature and consequences of his act is the commission of suicide. These decisions establish the proposition that the word "suicide" in its technical legal meaning does not include the taking of his life by one who is insane to the extent stipulated in this action. The result is that the words "committed suicide" do not, either in their plain, usual, ordinary sense or in their technical, legal import include or cover the taking of his life by one who is insane to such an extent that he is incapable of understanding the nature or consequences of his act. From these premises the logical conclusion is to my mind irresistible that the defense that "while insane to such an extent as to be incapable of understanding the nature or consequences of his act" the insured took his life, is not a defense that he committed

suicide. For this reason section 5855 does not operate upon or affect this action and under the stipulation of the parties the amount of the plaintiff's recovery should be limited to $811.83.

98 The presumption of fact and of law is that the legislature of the State of Missouri when it enacted this section we have been considering knew the plain, ordinary sense of the words "committed suicide," that they knew the technical, legal meaning which repeated judicial decisions had given to these words and that they were familiar with the established rule of law and of the statute of their State that the words must be interpreted in accordance with this plain meaning and this technical import. The imputation to the members of this body of ignorance or of disregard of the meaning of these words and of this settled rule of construction is forbidden by a proper degree of respect for that legislative body. The defense of the company that the insured took his own life while insane should be sustained and the recovery should be limited to the amount of the assessments which the insured paid to the company.

Filed October 15, 1900.

99 (*Judgment.*)

And on the fifteenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *October* 15, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN. } No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that Rosa B. Jarman have and recover against the Knights Templars and Masons' Life Indemnity Company the sum of twenty dollars for her costs herein and have execution therefor.

October 15, 1900.

100 (*Petition for Rehearing.*)

And on the thirtieth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

101 In the United States Circuit Court of Appeals for the Eighth Circuit, May Term, A. D. 1900.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY COMPANY, Plaintiff in Error,
vs.
ROSA B. JARMAN, Defendant in Error. } No. 1347.

Petition for Rehearing and Brief in Support Thereof.

Petition for rehearing.

The Knight Templars and Masons' Life Indemnity Company, by Hervey Bryan Hicks, its attorney, respectfully petitions the court to grant a rehearing herein, for the reason that manifest errors appear in the opinion of the court filed herein, in this, to wit:

First. The court erred in holding that the self-destruction of the insured "while insane to such an extent as to be incapable of understanding the nature or consequences of his own act," was a defense that the insured "committed suicide," and was prohibited by the terms of sec. 5855 R. S. Mo., 1889.

102 Second. The court erred in holding that sec. 5855 (R. S. Mo., 1889) worked into and became a part of the contract between the insured and the company.

Third. The court erred in holding that "it was not within the power of the legislature to declare in 1887 with respect to the policy in suit that self-destruction might be pleaded as a defense in an action upon said policy because a legislative enactment to that effect would impair the obligation evidenced by the policy contrary to the State and Federal Constitutions."

Fourth. The court erred in holding that the amendments to the constitution or by-laws of the plaintiff in error did not become a part of the contract or the policy in suit.

Fifth. The court erred in holding that the changes in the constitution or by-laws lessened the value of the policy in question.

Sixth. The court erred in holding by inference, if not expressly, that the amendments to the constitution, if applied to the contract of Jarman, "impaired any of its essential provisions," or "deprived him of any substantial right or benefit secured by his policy."

Seventh. The court is respectfully urged in the consideration of this question of the amendments to take cognizance of the application of said amendments to the contracts of all the members, the effect of now superseding the construction which has been followed for years by the construction the court has adopted in its opinion, upon all the members of the defendant company, and whether such construction if applied will tend to preserve or to destroy the society.

For which reasons the petitioner prays that it may be
103 granted a rehearing, and that the opinion heretofore filed may be set aside and held for naught.

HERVEY BRYAN HICKS,
Attorney for Petitioner.

S. S. GREGORY, *Of Counsel.*

We, S. S. Gregory and Hervey Bryan Hicks, of counsel for the plaintiff in error herein, do hereby certify that in our judgment the foregoing petition for a rehearing is well founded, and that the same is not interposed for delay.

S. S. GREGORY,
HERVEY BRYAN HICKS.

Filed Nov. 30, 1900.

JOHN D. JORDAN, *Clerk.*

104 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order denying the petition for rehearing in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error,
vs.
ROSA B. JARMAN.
No. 1347.

In error to the circuit court of the United States for the western district of Missouri.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

105 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing one hundred and four pages contain a true copy of the portions of the transcript of the record printed pursuant to the stipulation of the parties and upon which said cause was heard, together with the transcript of record from the circuit court of Grundy county, Missouri, and the stipulation as to time for pleading, etc., filed in the circuit court of the United States, which were omitted from the printed record by stipulation of the parties, and full, true and complete copies of all the proceedings and record entries, including the opinion of said circuit court of appeals, in a certain cause wherein The Knights Templars and Masons' Life Indemnity Company was plaintiff in error, and Rosa B. Jarman was defendant in error, No.

1347, May term, 1900, as fully as the same remain on file and of record in my office.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this nineteenth day of January, A. D. 1901.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

106 [Endorsed:] File No. 18055. U. S. C. C. of appeals, 8th circuit. Term No. 254. The Knights Templars and Masons' Life Indemnity Company, petitioner, *vs.* Rosa B. Jarman. Filed February 18, 1901.

107 In the United States Circuit Court of Appeals for the Eighth Circuit.

KNIGHTS TEMPLARS AND MASONS' LIFE INDEMNITY Company, Plaintiff in Error, *v.* ROSA B. JARMAN, Defendant in Error.	No. 1347.

Whereas a writ of certiorari has been heretofore issued on the 11th day of March, 1901, directed to the honorable, the judges of the United States circuit court of appeals for the eighth circuit, directing them to send, without delay, to the Supreme Court, the record and proceedings in the above-entitled case, so that the said Supreme Court may act thereon as of right and according to law ought to be done,

It is hereby stipulated and agreed between the parties hereto, by their respective attorneys, that the certified transcript of record in the above-entitled case, which is now on file in the Supreme Court of the United States, may be taken as a return to the said writ of certiorari.

Dated, Chicago, March 14th, 1901.

HERVEY BRYAN HICKS,
Attorney for Plaintiff in Error.

(Signed) HARBER & KNIGHT &
FREDERICK H. BACON,
Attorneys for Defendant in Error.

[Endorsed:] Copy. No. 1347. United States circuit court of appeals, eighth circuit. Knights Templars & Masons' Life Indemnity Co., plaintiff in error, *v.* Rosa B. Jarman, defendant in error. Stipulation. Filed March 16, 1901. John D. Jordan, clerk. Hervey Bryan Hicks, attorney for plaintiff.

108 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Knights Templars and Masons' Life Indemnity Company is plaintiff in error, and Rosa B. Jarman is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the western district of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and
109 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of March, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 18,055. Supreme Court of the United States. No. 254, October term, 1901. The Knights Templars & Masons' Life Indemnity Co., *vs.* Rosa B. Jarman. Writ of certiorari and return. Filed Mar. 18, 1901. Filed Mar. 16 1901 John D. Jordan, clerk.

110 *Return to Writ.*

UNITED STATES OF AMERICA, }
Eighth Circuit, } *ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of The Knights Templars and Masons' Life Indemnity Company, plaintiff in error, *vs.* Rosa B. Jarman, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this sixteenth day of March, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.